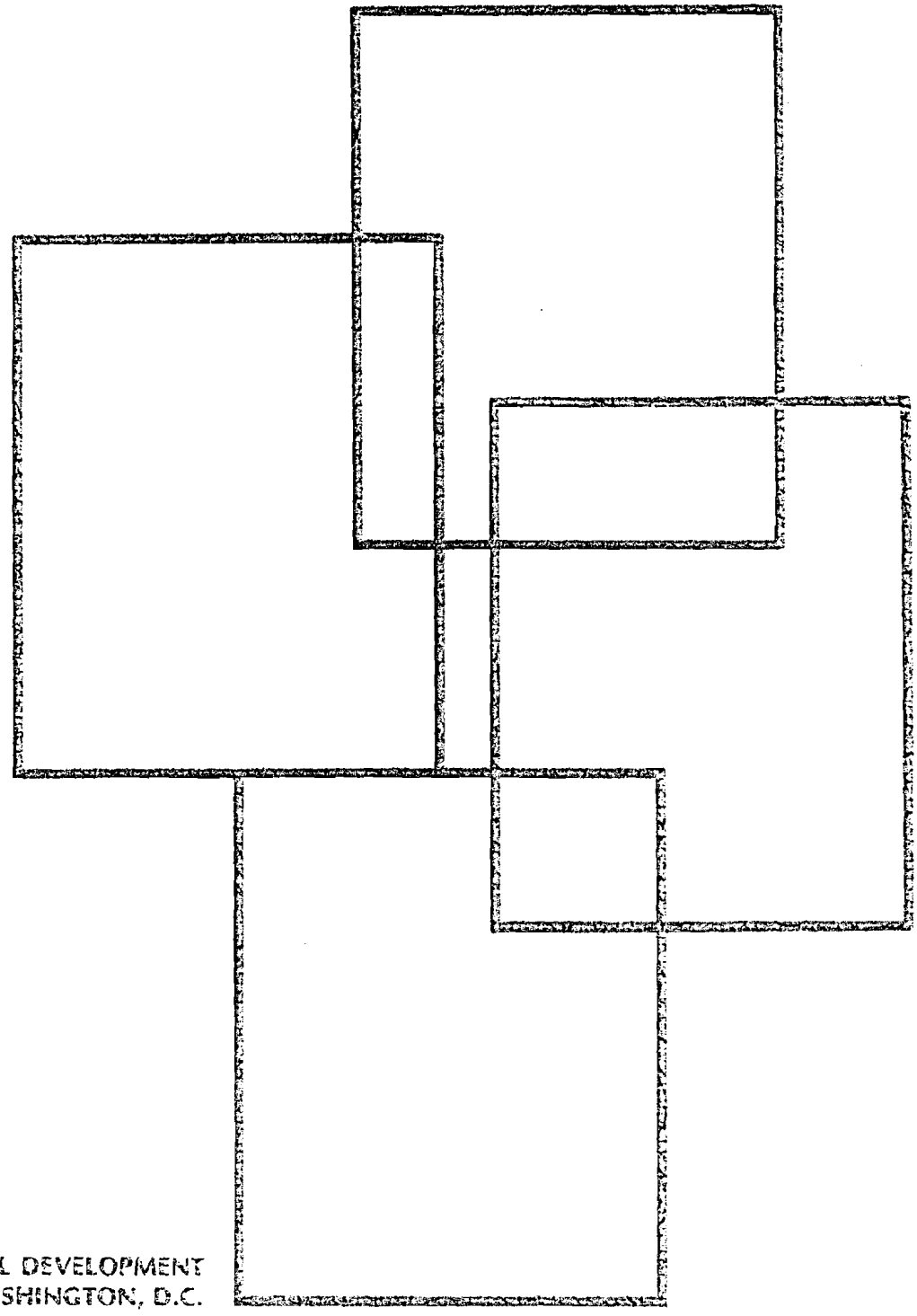
Separations and Disciplinary Actions



AGENCY for INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C.

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HANDBOOK TRANSMITTAL MEMORANDUM	DATE January 28, 1994	TRANS. MEMO NO. 30:55

MATERIAL TRANSMITTED:

Handbook 30 - Separations and Disciplinary Actions

Chapter 9, Reduction in Force in the Senior Executive Service, has been revised and reissued in its entirety.

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   9-1 through 9-12 (TM 30:48) 9-1 through 9-11

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SEPARATIONS AND DISCIPLINARY ACTIONS

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4-1-75	Pages 4-1 and 4-2, Att. 4A and 4B of Ch. 4	30:1
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1-22-76	NOTE regarding sex-biased language in handbooks	30:3
7-20-76	Pages 1-1 and 1-2, 1-5 thru 1-7 of Chapter 1, Chapter 7	30:6
9-12-78	Pages 4-3 through 4-14 of Chapter 4	30:19
Various	Chapter 5; 5A-12 thru 5A-22 of the Appendix	30:25
7-29-80	Pages 1-3 and 1-4 of Chapter 1	30:27
12-1-83	Attachment 3B1-1 thru 3B1-4; and 3B2-1 thru 3B2-5 of Chapter 3	30:36
10-15-84	Pages 5A-1 thru 5A-7 of Attachment 5A, Ch. 5	30:37
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10-4-85	Supplement 3C-1 thru 3C-10 to Chapter 3	30:41
8-30-85	Index in its entirety	30:42
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9-23-87	Pages 3C-10a thru 3C-10f	30:46
8-1-88	Pages 3A-1 and 3A-2 of Sup. 3 to Chapter 3	30:47
Various	Pages 2-1 thru 2-3; Sup. 2A, and 2B; Att. 2A thru 2E of Ch. 2; Chapter 2.1 and all Attachments; pages 3C-10g and 3C-10h of Ch. 3	30:48
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11-1-91	Chapter 8 and pages TC-1 thru TC-11 of the Table of Contents	30:53

1-8-91	Page 6-5 and 6-6 of Chapter 6	30:54
1-28-94	Chapter 9 in its entirety	30:55

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	DATE January 8, 1992	TRANS. MEMO NO. 30:54

MATERIAL TRANSMITTED:

Handbook 30 - Separations and Disciplinary Actions

As a result of the Agency reorganization, section 6G2 has been revised to reflect the change in the division name.

SUPERSEDES:

Pages 6-5 and 6-6 (TM 30:52)

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SEPARATIONS AND DISCIPLINARY ACTIONS

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4-12-89	Atts. 6A, 6B, 6C, and 6D of Chapter 6	30:50
12-5-87	Att. 5B of Ch. 5	30:51
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AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	DATE November 1, 1991	TRANS. MEMO NO. 30:53

MATERIAL TRANSMITTED:

Handbook 30 - Separations and Disciplinary Actions

Chapter 8 has been revised in its entirety. The Table of Contents have been reissued to reflect this change.

SUPERSEDES:

Pages TC-1 thru TC-8 of the Table of Contents; pages 8-1 and 8-2 of Chapter 8. (TM 30:52, TM 30:43)

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SEPARATIONS AND DISCIPLINARY ACTIONS

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8-31-84	Pages 3-8 and 3-9 of Ch. 3	30:49
4-12-89	Atts. 6A, 6B, 6C, and 6D of Chapter 6	30:50
12-5-87	Att. 5B of Ch. 5	30:51
8-1-91	Sup. 2C and pages 6-1 thru 6-12 of Chapter 6	30:52
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AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	DATE September 15, 1989	TRANS. MEMO NO. 30:51

MATERIAL TRANSMITTED:

Handbook 30 - Separations and Disciplinary Actions

Chapter 5, App. A, Att. B -- Suitability Guidelines for Appointment and Continued Employment

Chapter 5, App. A, Att. B consists of 3 FAM 622, Suitability Guidelines for Appointment and Continued Employment, uniform State/AID/USIA/Commerce/Agriculture regulations. The attachment reflects updated material based on revised U.S. statute and regulations.

Chapter 6, Circular is outdated and should be removed.

SUPERSEDES:

Pages 5B-1 through 5B-7 (TM 30:30).
Delete page 1 (TM 30:25) in front of Chapter 6.

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CHECKLIST FOR HANDBOOK 30
SEPARATIONS AND DISCIPLINARY ACTIONS

AUTHOR OFFICE: M/PM/PDE/PP

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Various	Chapter 5; pages 1 and 2 of the Index	30:25
7-29-80	Pages 1-3 and 1-4 of Chapter 1	30:27
12-1-83	Attachment 3B1-1 thru 3B1-4; and 3B2-1 thru 3B2-5 of Chapter 3	30:36
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8-31-84	Pages 3-7 thru 3-10 of Ch. 3	30:49
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AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK 30

SEPARATIONS AND DISCIPLINARY ACTIONS

TM 30:1
April 1, 1975

PREFACE

Early in 1972 the Agency made the decision to convert the AID manual orders to a series of specialized handbooks. In compliance, SER/PM has developed new personnel handbooks to replace existing personnel manual orders. The objectives have been:

-- To condense and simplify directive material.

-- To place, to the extent practicable, all information and instructions of general Agency-wide utility on a given subject in one location.

-- To highlight principal personnel policies, rules, and regulations.

The personnel handbooks include those rules, regulations, and operating procedures which affect more than one Office, Bureau, or Mission. They also incorporate pertinent Uniform State/AID/USIA Regulations and portions of the Federal Personnel Manual. They do not include detailed background information, functional statements, or internal personnel office procedures, unless this information is essential to users generally.

There are ten volumes:

Handbook 24, General Personnel Policy
Handbook 25, Employment and Promotion
Handbook 26, Position Classification, Pay, and Allowances
Handbook 27, Attendance and Leave
Handbook 28, Training and Staff Development
Handbook 29, Employee Relations and Benefits
Handbook 30, Separation and Disciplinary Actions
Handbook 31, Foreign National Personnel
Handbook 32, Personnel Actions, Records, and Reports
Handbook 33, Overseas Position Management
(Existing handbook, formerly an attachment to M.C. 435.4, designated as an AID Handbook)

Each handbook is organized into chapters dealing with a topic within the general subject area indicated by the title. A table of contents is included in each handbook. The Transmittal Memorandum for each handbook will indicate which manual orders and manual circulars it supersedes; concurrently, cancellation notices are distributed to all holders of manual orders.

(TM 30:1)
April 1, 1975

Personnel Handbooks will not all be distributed at once. Accordingly, there will be an interim period where both manual orders and handbooks in the personnel area will be in Agency-wide use. Manual orders and manual circulars will remain in effect until they are specifically superseded by a handbook and canceled by a Manual Transmittal Letter.

Supervisors, employees, and administrative/executive officers should use the handbooks for general guidance in all matters of personnel to which they pertain. For unusual problems or counseling needs, the appropriate office in SER/PM should be contacted.

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM

TM 30:1
April 1, 1975

MATERIAL TRANSMITTED:

Handbook 30 - Separations and Disciplinary Actions

This Handbook is part of the new handbook series which the Agency has developed to replace the AID Manual Orders.

Only Chapter 4, Civil Service Retirement, is being published at this time. This chapter contains no substantive changes in policy or procedure.

Chapter 4 supersedes M.O.'s 414.5, Paragraph VII, 478.2, and 478.5.

Chapters 1, 2, 3, 5, 6, 7, and 8 will be published at a later date. Until the chapters are published the manual orders covering the material of each chapter will remain in effect and are indicated in the Table of Contents for each chapter.

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HANDBOOK 30

SEPARATIONS AND DISCIPLINARY ACTIONS

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Chapter 2.1 - Involuntary Separations - Foreign Service
(All material in this chapter that pertained to Civil Service employees has been superseded and moved to Chapter 2, Involuntary Separations, Civil Service. The material pertaining to Foreign Service employees in this chapter will be updated and reissued as Chapter 8.)

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N O T E

Throughout this Handbook, masculine pronouns are to be interpreted as including both men and women, unless the context specifically excludes this interpretation. Future revisions will take into account the AID directive (HB 18, Part I, 2E) of 12/30/75 on the avoidance of sex-biased language.

CHAPTER 1

VOLUNTARY SEPARATIONS

1A. Abandonment of Position

1. General

An employee who, without written or oral explanation, quits his job or fails to return to work after the expiration of approved leave or furlough (other than furlough under reduction in force) is subject to separation for abandonment of position.

2. Legal Basis

Civil Service Regulations in the Federal Personnel Manual contain the authority for separating departmental employees for abandonment of position. The Foreign Service Act of 1946, as amended, contains authority to prescribe regulations for the effective conduct of the foreign service personnel program. In separating foreign service employees for abandonment of position, the same principles and procedures as are applicable to Civil Service employees are followed.

3. Applicability

This section applies to all U.S. citizen employees of AID.

4. Policy

Agency policy is:

a. To make a reasonable attempt to locate an employee whose absence is unauthorized or unexplained and to ascertain his intentions regarding his position.

b. To initiate separation action for abandonment of position if the employee cannot be reached or otherwise does not indicate whether he plans to return to duty or to resign.

c. To give the employee the benefit of any doubt which may exist in establishing the fact of abandonment of position.

5. Responsibility of Employing Office

a. Definition

"Employing Office" as used herein refers to the office responsible for effecting personnel actions involving the employee in question. Thus, the employing office may be the Office of Personnel and Manpower (SER/PM), or the administrative office at post (for personnel employed locally).

b. Decision to Separate

The decision to separate an employee for abandonment of position rests with the employing office, based on information furnished by supervisors or other management officials.

c. Authority to Separate

Proposed separations are approved and authorized by officials of the employing office having such authority.

6. Determination of Appropriate Action

If an employee quits his job, or fails to return to duty after an authorized period of absence, without explanation, the Agency takes action as follows:

a. Attempt to Communicate With Employee

The employing office (or the Mission's administrative office if employee is serving overseas):

(1) Tries promptly to locate employee and ascertain his intentions.

(2) Sends a letter to employee's last known address if he cannot be located and nothing is heard from him for ten calendar days. The letter is sent by registered mail, return receipt requested. It informs the employee that, unless he returns to duty or gives a justifiable reason for his absence by a specified date, the Agency will initiate action to separate him for abandonment of position.

b. Action if Employee Returns to Duty

(1) If the employee returns to duty by the date specified in the letter (or advises of

1A6b(1)

his intention to return) and satisfactorily explain his absence, no further action is necessary other than appropriate change to leave.

(2) If the employee returns (or advises of his intention to return), but fails to explain his absence satisfactorily, disciplinary action may be in order. If so, such action is taken pursuant to Chapter 6.

c. Action if Employee Fails to Return

(1) If the employee notifies his employing office that he has resigned, the employing office should process his separation as a resignation. In such case, the SF 50, "Notification of Official Personnel Action," includes a statement of the circumstances of the resignation.

(2) The employing office, based on a review of all of the pertinent facts and circumstances, determines whether to separate the employee for abandonment of position:

(a) if the employee has been reached, but fails without satisfactory reason, to return to duty or to declare his intentions within 10 calendar days from the time he was reached; or

(b) if the employee could not be reached, and his unauthorized absence continues for a period of 21 calendar days without any notice to the Agency.

7. Decision to Separate for Abandonment of Position

a. If the employing office determines that such action is proper, it prepares form AID 4-520, "Notification of Official Personnel Action," to show "Separation--Abandonment of Position." The effective date is the last day the employee was present for duty, or the last day of his authorized leave or furlough, as appropriate. If the period of leave included home leave, the employee is required to make refund for the home leave he has used.

b. As notification of the Agency's action, a copy of the form AID 4-520 is sent to the employee's last known address.

8. Employees Having Reemployment Rights In Other Federal Agencies

Once a decision to separate an employee for abandonment of position has been reached, the employing office notifies the agency in which he has reemployment rights as promptly as possible of the circumstances.

- -

IB. Resignation

1. General

a. Purpose

This section establishes policy, responsibilities and procedures governing resignation of AID employees.

b. Definition

A resignation is the separation of an employee from the Agency's rolls at his/her own request.

2. Applicability

This Chapter applies to all United States citizen direct-hire employees of AID.

3. Policy

It is Agency policy that:

a. No employee is denied the right to resign.

b. A resignation is binding on the employee unless, in the discretion of the responsible Agency official, he/she is permitted to withdraw it.

c. An employee may elect to resign rather than submit to Agency-initiated removal procedures.

d. No employee is coerced or threatened to obtain his/her resignation. (However, informing an employee of an alternative which may ensue if he/she does not resign does not constitute coercion or threat so long as none is implied.)

e. An employee who elects to resign while disciplinary action or other separation action is pending may do so, but he/she is informed by a responsible personnel official that notation of the pending action will be shown on the SF 50 documenting his/her resignation.

f. In the situation described in 1B3e above, the employee may not fix the effective date of his/her resignation later than the date on which the Agency-initiated action would normally take effect.

4. Procedures

a. Advance Notice

In order to permit orderly planning, the Agency expects at least two weeks' advance notice of the resignation of a departmental employee; 30 days if the employee is in the Foreign Service and is currently working overseas. (See 1B5 for discussion of effective date.)

b. Manner of Submittal

(1) The employee submits his/her resignation in writing. The resignation shows reasons, effective date and/or last day of duty at post if employee is overseas. It is especially important that reasons be stated precisely and clearly since they may be used to establish entitlement to benefits under the Unemployment Compensation Act. If an employee declines to submit a written resignation, the Agency accepts his/her oral resignation, tendered in the presence of witnesses if possible. In the case of an oral resignation, the date, reasons, and names of witnesses are recorded in the employee's official personnel folder. If possible, the reason why employee declined to submit a written resignation should also be recorded. A resignation following receipt of reduction-in-force notice must be in writing.

(2) The employee submits his/her resignation to the immediate supervisor who forwards it, through proper administrative channels, as follows:

(a) Foreign Service employees assigned to positions in the United States to PM/PO/OS.

1B4b(2)

(b) Resident-hire Foreign Service employee - (1) to the Mission personnel officer or executive officer if initial appointment was made locally, or (2) to the Mission personnel officer or executive officer for transmittal to the appropriate AID/W personnel office if initial appointment was processed in Washington;

(c) AID departmental service employees - to PM/PO/W.

c. AID/W Notification

When an employee serving overseas makes known his/her intention to resign, Mission officials notify the responsible AID/W personnel office promptly.

5. Effective Date

Normally, a resignation is effective on the date the employee specifies. *In this respect, the employee should be advised that annual leave shall not be granted immediately before separation, except when in the interest of the service. Exceptions must be approved by the AID Office of Personnel Management (PM).*

The following principles are also observed with regard to Foreign Service employees:

a. Ordinarily, a resignation is not effected until medical clearances for the employee and his/her dependents are received unless the employee chooses to sign a waiver of medical clearances. However, the effective date of separation will not be delayed for failure to complete the medical examination. (See 1B7c.)

b. When no travel is involved, the effective date is the last day of active work status.

c. When travel is *involved, the* effective date is the last day of allowable transit time spent in traveling to the place of residence after completion of any authorized temporary duty in AID/W.

6. Special Provisions

a. Conditional Resignation

(1) The Agency does not accept a conditional resignation other than one relating to terminal medical clearance or disability retirement.

(2) If an employee otherwise specifies terms and conditions under which he/she will resign, the official receiving the resignation advises him/her that the Agency's acceptance is only of the fact of resignation and does not constitute agreement to the specified terms or conditions. In such case, the employee may withdraw the conditional resignation and resubmit an unconditional one.

b. Resignation of Employee Eligible for Retirement

If the employee is eligible for disability or optional retirement, he/she is counseled on the advisability of applying before action is taken on his/her resignation.

c. Resignation to Enter Military Service

The employee is advised that he/she is entitled to be carried on the Agency rolls until he/she actually enters on active military duty; and that delaying the separation will avoid a break in service or the necessity to refund a lump-sum payment if he/she is rejected for military duty for medical or other reasons.

7. Instructions to Resigning Employee

The responsible personnel office counsels the employee who is resigning with regard to the following:

a. If he/she has reemployment rights in another Federal agency, he/she is advised that he/she must apply to the agency no later than 30 calendar days from the effective date of separation. Failure to do so could cause the forfeiture of such rights.

1B7

b. He is advised of his rights under the retirement, health, life insurance, and unemployment compensation programs. In this connection, the following forms are used:

(1) SF 8, "Notice to Federal Employee About Unemployment Compensation."

(2) SF 56, "Agency Certification of Insurance Status." Federal Employees Group Life Insurance Program (1972 edition.)

(3) SF 2802, "Application for Refund of Retirement Deduction."

(4) SF 2810, "Notice of Change in Health Benefits Enrollment."

c. If he is a foreign service employee, he is advised that the provisions of HB 29, Ch 1, are applicable -- that a separating employee and dependents who traveled to post shall complete prescribed medical examinations; however, he will be deemed to have waived any future claim for medical examination or treatment under the Foreign Service Act of 1946, as amended, for himself or for any of his dependents who traveled to post if such person(s) fail to complete the prescribed medical examination(s) prior to the effective date of separation. (Also see Ch 8, HB 30.)

1C. Separation Travel - Foreign Service Employees

1. General

This section prescribes the circumstances under which an employee who is separating from the AID foreign service may be authorized travel and transportation of effects.

2. Legal Basis

See HB 22, Ch 9.

3. Applicability

The provisions of this instruction apply to all United States citizen employees in AID foreign service, including employees of the participating agencies. (See HB 22, Ch 9.)

4. Responsibility

The responsibility to authorize or approve travel and transportation of effects in connection with an employee's separation from foreign service is delegated to the employing office as defined in AID travel regulations for foreign service employees.

5. Eligibility

The employing office may authorize travel and transportation of effects for U.S. citizen employees meeting any of the following conditions:

a. An employee whose separation is involuntary, including but not limited to separation for cause, failure to qualify, failure to accept new assignment, or disability; mandatory or disability retirement; reduction in force; selection-out; termination of time-limited appointment.

b. An employee who receives official orders to enter the armed forces of the United States. However, travel is not authorized on the basis of notices to report for physical examination preliminary to induction or enlistment in the military service.

c. An employee serving in an executive personnel position, as defined in HB 25, Ch 8, whose resignation is accepted by the Administrator.

d. An employee who resigns:

(1) At the completion of his prescribed tour of duty;

(2) At the completion of his tour of duty when such tour is shortened under the provisions of HB 25, Ch 6.

(3) After the completion of five years of continuous service in the AID foreign service (including service on rotation in AID/W), at least six months of which has been during the employee's current tour;

(4) For reasons of a compelling personal and humanitarian nature which are acceptable to the Agency, such as:

(a) An employee or a member of his family incurs a serious illness for which adequate medical treatment is not available at the post or within the area. Medical certification is required;

(b) A member of the employee's family (not at post) suffers an illness or death which imposes upon the employee the care of an invalid or maintenance of a home for minor children or aged kin;

(c) Employee or a member of his family is unable to adjust to living in a foreign area and continued employment in the area would result in breaking up the family group.

(5) Whenever such resignation is considered to be advantageous to the United States Government.

Service abroad by an employee of any U.S. Government Agency (including the armed forces) counts toward the service requirement set forth in

(1), (2), and (3) above, if the employee was appointed abroad by AID without a break in service from the agency in which he served provided the employee serves at least six months in the AID foreign service.

e. **An employee who was converted to resident status during a tour of duty continues** to be eligible for return travel at Government expense upon completion of the initially prescribed **tour. However, the employee, if also eligible to travel as a dependent of a Government employee, must elect to travel either as an employee or a dependent.**

f. Employees who apply for optional retirement under the Civil Service Retirement Act and regulations issued pursuant to Public Law 89-205, when approved in advance by AID/W.

Chapter 2

INVOLUNTARY SEPARATIONS - CIVIL SERVICE

2A. Purpose

This chapter provides the policies, authorities, regulations and procedures to be followed for involuntary separations, including Reduction In Force (RIF), furlough and separation during probationary period.

2B. Applicability

This chapter applies to all A.I.D. direct-hire employees serving in positions in the continental United States, except consultants and experts, Senior Executive and Foreign Service employees, Schedule C and AD appointees and employees serving under Executive Level appointments.

2C. Definitions

1. Assignment Right. The right of an employee to be assigned, in the second round of competition, to a position in a different competitive level held by another employee with lower standing on a retention register.

2. Bump. The assignment of an employee to a position held by another employee in a lower subgroup in another competitive level.

3. Competing Employee. An employee in tenure Group I, II or III in the competitive or excepted service (see Att. 2C).

4. Competitive Area. The organizational and geographical boundaries in which employees compete in a RIF. Employees in a competitive area compete only with each other and not with employees in other competitive areas (see Att. 2A).

5. Competitive Level. A group of positions in the same grade and classification series with similar duties and qualification requirements.

6. Days. Consecutive calendar days.

7. Function. All or a clearly identifiable segment of the Agency's mission, including all integral parts of that mission, regardless of how it is performed. In the definition of function, the following terms have a special meaning: agency may be any organizational entity, e.g., a department, bureau, division, field installation, branch; parts means that any agency activity may be a function; segment means an activity and general, but not always, excludes an individual job or task.

2C

8. Furlough. The placing of an employee in a temporary nonduty, nonpay status for more than 30 days, or 22 consecutive workdays, but not more than one year when the action is based on a RIF reason and is not in accordance with preestablished conditions of employment.

9. Grade Difference. The difference between successive grades in a one-grade occupation, e.g. GS-6-7-8-9.

10. Grade-interval Difference. The difference between successive grades in a multigrade occupation, e.g. GS-5-7-9-11.

11. Rating of Record. The overall rating derived from the rating of elements and required at the time specified in the Agency's Performance Management Plan or at such other times as the Plan specifies for special circumstances. The five ratings of record are Outstanding, Exceeds Fully Successful, Fully Successful, Marginally Successful and Unacceptable.

12. Reduction in Force. A personnel action that releases a competing employee from his/her competitive level by furlough for more than 30 days, separation, demotion or reassignment requiring displacement, when the release is required due to lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a RIF in the employee's competitive area and when the RIF will take effect within 180 days.

13. Reorganization. The **planned** elimination, addition or redistribution of functions and duties within an organizational unit.

14. Representative Rate. The fourth step of the grade for a position under the General Schedule (except for the single rate for GS-18), the prevailing rate for a position under the Federal Wage System or similar wage-determining procedures, and, for other positions, the rate designated by the Agency as representative of the position. Employees covered by the Performance Management and Recognition System are GS employees for purposes of determining representative rates. Merit Pay positions are under the General Schedule and have the same representative rates as GS positions at the same grade level.

15. Retention Register. A list of employees within a competitive level. Employees are grouped by tenure, veteran preference and length of service augmented by performance credit.

2C

16. Retention Standing. An employee's relative standing on a retention register. The standing is based on tenure, veteran preference and length of service augmented by performance credit.

17. Retreat. The assignment of an employee to a position held by another employee with lower retention standing in the same subgroup in a different competitive level.

18. Rounds of Competition. The different stages of competing for retention. In the first round, employees compete to stay in the competitive level; in the second, employees compete for assignment to positions in different competitive levels.

19. Service Date. The date that an employee with no previous service entered on duty, or an adjusted entrance on duty date obtained by subtracting the employee's total prior creditable service from the date of the employee's entrance on duty.

20. Status Quo Employee. An employee who failed to acquire a competitive status when the position in which he/she was serving was placed in the competitive service by statue, Executive Order or Civil Service rule that permitted the employee's retention without acquiring such status.

21. Subgroup Standing. An employee's relative standing on a retention register based on tenure and veteran preference, but excluding length of service and performance credit.

22. Tenure. The period of time an employee may reasonably expect to serve under his/her current appointment.

23. Transfer of Function. The transfer of the performance of a continuing function from one competitive area to one or more other competitive areas (except when the function is virtually identical to ones performed in another affected competitive area), or the movement of the competitive area in which the function is performed to another local commuting area.

24. Undue Interruption. A degree of interruption that would prevent the completion of required work within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines and other demands.

SUPPLEMENT 2A

REDUCTION IN FORCE - CIVIL SERVICE

1. Purpose

This supplement provides the policies, authorities, regulations and procedures to be followed in Reduction in Force (RIF) actions affecting A.I.D. direct-hire employees serving in positions in the continental United States.

2. Authorities and References

a. Civil Service Reform Act of 1978
b. 5 U.S.C. 3502
c. 5 CFR 351
d. FPM 351 (Reduction in Force)
e. Veteran's Preference Act of 1944, as amended

3. Policies

a. RIF will be initiated regardless of race, sex, color, age, religion, national origin, handicapping conditions, marital status or political affiliation.

b. RIF will be initiated consistent with the definition; RIF procedures will **not** be used to avoid prescribed Agency procedures for other situations, e.g. adverse actions.

c. RIF actions will be taken in compliance with laws, regulations and negotiated bargaining agreements.

d. An employee who has been reduced in grade will receive special consideration for promotion to a position for which he/she is qualified at his/her former grade. Repromotion consideration is limited to three years.

e. Before initiating RIF, Agency management and operating officials will explore ways to avoid RIF or to minimize its effects.

f. RIF reassignment actions will be applied consistently and uniformly. Discretionary reassignment will not provide for changes from other-than-fulltime to fulltime, from competitive to excepted, or from excepted to competitive positions. Reasonable accommodations will be provided to handicapped employees when considering placement.

3

g. The Agency will, when it discovers an error in the determination of an employee's retention standing, correct the error and adjust any erroneous RIF action to agree with the employee's proper retention standing.

h. Employees have the right, when certain conditions are met, to accompany their work when it is moved to a different competitive area or geographic location if the alternative in the losing organization is separation or downgrading.

i. When the Agency decides that a RIF action was unjustified or unwarranted and restores an individual to his/her former grade or rate of pay or to an intermediate grade or rate of pay, it will make the restoration retroactive to the date of the improper action.

j. The Agency will counsel employees on benefits including information about retirement, voluntary, optional or discontinued service. The Agency will not coerce an employee to retire; it will issue a statement affirming the voluntary nature of retirement to all employees. If management becomes aware of any coercion, action will be taken to eliminate it.

4. Responsibilities

a. Assistant Administrator, Bureau for Personnel and Financial Management (AA/PFM)

(1) Resolves disagreements between PFM/PM/PM and a proposed receiving office regarding the qualifications of an employee or of the position requirement.

(2) Reviews and approves/disapproves Bureau/Office requests for RIF.

b. Director, Office of Personnel Management (PFM/PM/OD)

(1) Informs Director, EOP, of approval of Bureau/Office RIF requests.

(2) Withholds action to fill vacant positions in occupations and at levels at and below the qualifications and grades of employees affected by an approved RIF.

(3) Delays action on requests for a position or personnel change that would result in removing an employee from RIF competition before the RIF has been accomplished unless the action would make the RIF unnecessary or would reduce the number of employees to be separated.

4b

(4) Reviews Bureau/Office recommendations of which positions are to be abolished and provides appropriate recommendations as required.

c. Civil Service Personnel Division (PFM/PM/CSP)

(1) Provides U.S. Office of Personnel Management (OPM) advance notice of a significant RIF.

(2) Sends advance notice of RIF to U.S. Department of Labor, Office of Federal Unemployed Insurance Programs.

(3) Establishes competitive levels and compiles retention registers.

(4) Makes certain records used to determine employees' retention standing are correct, and that discrepancies are corrected before a RIF occurs.

(5) Preserves registers and records related to employees for at least one year from the date employees are issued specific notices.

(6) Notifies employees of the time and place registers of retention are available for inspection.

(7) Identifies, through internal issuances, which specific ratings of record will be considered annual ratings for RIF purposes.

(8) Establishes cutoff date prior to issuance of RIF notices after which no new ratings will be put on record and used for RIF purposes.

(9) Determines employees' justifications when reassigning employees to vacant jobs to avoid RIF, and/or waives qualifications requirements when placing employees in this way.

(10) Notifies employees of RIF or furlough action.

(11) Establishes a placement program to help employees find jobs in other federal agencies and outside the federal government.

d. Assistant Administrators and Office Heads

(1) Requests RIF action for respective organization.

(2) Recommends positions to be abolished in respective organization.

4d

(3) Contacts Office of Equal Opportunity Programs for advice regarding the impact of proposed action on their respective organization's equal employment and affirmative action planning program.

e. Office of Equal Opportunity Programs (EOP)

(1) Provides guidance to Assistant Administrators and Office Heads regarding potential impact of RIF.

(2) Reviews RIF requests submitted to the Director, PFM/PM/OD, and provides guidance regarding the potential impact on the Agency's equal employment and affirmative action goals and objectives.

f. Office of Financial Management (PFM/FM), Office of Information Resources Management (M/SER/IRM)

Advises Director, PFM/PM/OD, or designee, of proposed or pending changes in any A.I.D. organization, program or funding that may alter the composition, disposition or level of the workforce.

g. Employees

Inspect retention registers and related records that have a bearing on a specific action taken or to be taken against them.

5. Procedures

a. Request for RIF

The Agency provides OPM advance notice of a significant RIF so that effort can be made to assist employees through the Interagency Placement Assistance Program.

b. Determining Competitive Areas

Competitive areas should be in effect at least 90 days prior to a RIF. When changes in existing competitive areas are made or new areas are established less than 90 days prior to the effective date of a RIF, prior OPM approval is required.

c. Notices to Labor Department

The Agency provides the Department of Labor advance notice when separating 25 or more employees in a commuting area by RIF.

5

d. Identifying Positions to be Abolished

Agency Bureaus/Offices recommend positions to be abolished in their respective organizations.

e. Determining Affected Employees

PFM/PM establishes competitive levels by service, appointment authority, pay schedule, work schedule, supervisory and nonsupervisory status and trainee status, and compiles a retention register. Names of competing employees are arranged on the register by tenure groups and subgroups (see Att. 2C). Sex may **not** be the basis for assigning a position to a competitive level, except for a position that OPM has determined certification of eligibles by sex is justified. Employees compete in their competitive levels during the first round of RIF competition.

(1) GS employees on the detail support complement are carried in the last official position in AID/W prior to detail to the complement.

(2) Noncompeting employees are listed under that title on a separate list apart from the retention register. Noncompeting employees include:

(a) specifically limited temporary employees (except as in the case of excepted employees in Group III), listed in any order;

(b) employees with a written decision of removal from the position because of Unacceptable or equivalent performance.

Before any selections for RIF actions within a competitive level are made, noncompeting employees are released from the competitive level.

(3) Excepted positions are not included on the same retention register with competitive positions; separate competitive levels are compiled for positions in the excepted service. Employees with competitive status in positions that have been moved into the excepted service are treated as employees in the competitive service for inclusion on retention registers.

f. Retention Register

When a proposed personnel action will result in the release of a competing employee from a competitive level, a retention register for that competitive level will be established. The register includes the name of each competitive employee:

5f

--officially assigned to a position in the competitive level, including employees on paid or unpaid leave, on nonmilitary furlough, on Intergovernment Personnel Act assignment or on detail to another position;

--temporarily promoted from the competitive level by temporary or term promotion; or

--who has received a written decision of demotion or reassignment due to unacceptable performance to a position in the competitive level.

The retention register and actions based on it must be adjusted if, between the date the specific notice is issued and the effective date of the proposed action, any of the following occur:

--probationary period is completed;
--a new official performance rating is given;
--competitive status changes;
--tenure changes;
--service date is corrected;
--veteran preference is allowed or withdrawn;
--additions are made to the competitive level.

When an employee's position is abolished, the employee is **not** automatically released from his/her competitive level. Before a competing employee may be released from a competitive level, the Agency must first release employees who:

--are serving in positions in that competitive level under a specifically limited temporary appointment;

--are serving in positions in that competitive level under a term promotion or temporary promotion;

--have received a written decision of removal or demotion for unacceptable performance from positions in that competitive level;

--have a lower retention standing in the same competitive level, unless a mandatory or permissible exception is made.

After noncompeting employees are eliminated, selection for release from a competitive level is made in the inverse order of retention standing, beginning with the lowest standing employee on the retention register.

5f

All employees in group III are released before any employee in group II is released; all employees in group II are released before any employee in group I is released. Within each group, all employees in subgroup B are released before any employee in subgroup A is released; all employees in subgroup A are released before any employee in subgroup AD is released. Within each subgroup, employees are released in the order of their service dates beginning with the most recent service date which includes performance credit.

(1) Breaking Ties

When two or more employees in the same subgroup have the same service date and when one or more, but not all, of the tied employees must be released from the competitive level, the tie is broken by considering OPM prescribed factors appropriate to the individual case.

(2) Exceptions

(a) Mandatory. Employees in group I or II entitled to be retained for six months or one year after restoration from military duty, are retained over all other employees **in their subgroups** until the applicable retention period expires. However, such employees may not be retained if employees **in higher subgroups** are being released from the competitive level. The reasons for any deviation from the required order of release will be noted on the retention register.

(b) Permissive Continuing. An employee whose duties cannot be taken over by a higher standing employee within 90 days and without undue interruption to the work program is retained.

--Each higher standing employee reached for released from the competitive level is notified in writing of the exception and the reasons.

--The retention register and related records are noted to reflect the exception.

--While the Agency may not delay or deny assignments to a sensitive position solely because the employee does not have the appropriate security clearance, it may consider whether the time period required to complete the clearance will result in undue interruption to the activity, and apply that standard to the potential RIF assignment.

5f2

(c) Permissive Temporary. An employee is retained for 90 days or less after the effective date of release of a higher standing employee from the same retention register to continue an activity without undue interruption, to satisfy a government obligation to the retained employee, or when the temporary retention of the lower-standing employee does not adversely affect the right of any higher-standing employee released ahead of the lower-standing employee. Temporary retention of a lower-standing employee on sick leave as a permissive exception may exceed 90 days but may not exceed the date the employee's sick leave is exhausted.

--When the retention is for more than 30 days after the effective date of RIF actions for higher standing employees in the same competitive level, each higher standing employee is notified in writing of the reasons for the exception and the date the retention will end.

--The reasons for exception and the date the retention will end is noted opposite the retained employee's name on the retention register.

This exception may not be used because of a security clearance problem.

(d) Abolishment of Positions in a Competitive Area. When all positions in a competitive area will be abolished within 90 days, employees are released in subgroup order, but may be released regardless of retention standing within a subgroup, except when an employee must be retained under a mandatory exception. The notice of abolishment of positions in a competitive area includes the date the process will be completed.

g. Reclassification

When the grade of a position is reduced, the Agency must decide the reason for the change; the reason determines whether RIF procedures must be followed.

(1) Reclassification due to reorganization

(a) If a reorganization causes the Agency to release an employee from a competitive level through furlough for more than 30 days, separation, demotion or reassignment requiring displacement, the Agency must follow RIF procedures.

(b) If positions are eliminated or reduced in grade because of a reorganization, the Agency may avoid RIF procedures by reassigning all affected incumbents to vacant positions at their same grades in the same or different competitive areas.

5g

(2) Reclassification due to new standards or correction of error

If the grade of a position must be reduced because of the application of new U.S. Office of Personnel Management classification standards or the correction of classification error, RIF procedures are **not** applied.

(3) Reclassification due to erosion

(a) When an employee's grade must be reduced because duties gradually have drifted away through extended erosion, the position is reclassified. Evaluation of the position shows no proximate cause or determinable time for the change in duties.

(b) RIF procedures must be followed in job erosion reclassification actions when the downgrading action will be effective after the Agency formally announces a RIF in the employee's competitive area and when the RIF will occur within 180 days after the effective date of the downgrading action.

h. Reassignment

An employee does not have right of assignment to a position in a higher grade than his/her own. An employee in Tenure Group II and employees with a current annual performance rating of Unacceptable do **not** have right of assignment. While excepted employees have no right of assignment, the Agency may establish a system for assignment rights for competing employees in the excepted service.

After the Agency releases noncompeting employees from the competitive level, it may reassign employees within the competitive level. The Agency may reassign any employee in the competitive level to a vacant job at the same grade in the same or a different competitive level. These actions may make the release of a competing employee by RIF action unnecessary.

If a competing employee must be released, an employee in an abolished position has a right to one of the other positions in the level as long as he/she is not the lowest standing employee; if an employee in the abolished position has the lowest standing, he/she is released from the competitive level. Similarly, when satisfying an assignment right of an employee from a different competitive level, the Agency is not required to offer the job of the lowest standing employee. Instead, the Agency may reassign employees within the level and offer any position in the level as long as the assignment right is satisfied and the proper order of release from the level is followed.

5h

(1) Competing Employees

Assignment rights are extended to each competitive service employee in tenure group I or II who has a current annual performance rating of Minimally Successful or higher.

(a) Group I and II employees in the competitive service may be reassigned:

--if a continuing position for which they are qualified exists in another competitive level and the position is occupied by an employee **in a lower tenure group or in a lower subgroup within the same tenure group.** An employee may be reassigned to a position no more than three grade levels, or intervals, below the position from which the he/she was released. An employee may be offered a vacant position in lieu of RIF separation without regard to the three-grade limit provided the offer is made in subgroup or does not violate another employee's assignment rights. Displacement of an employee in a lower subgroup is called "bumping."

--if a continuing position for which they are qualified exists in another competitive level occupied by an employee having a lower retention standing **in the same subgroup** when the position is:

held by another employee with a lower retention standing in the same tenure group and subgroup;

the same grade or no more than three grades, or intervals, below the position from which the employee is released; five grades, or intervals, for a 30% disabled veteran;

the same position or one essentially identical to a position previously held by the released employee in any federal agency;

held by an employee with a current annual performance rating no higher than Minimally Successful **when the released employee's rating** is Minimally Successful;

when a determination to waive OPM's qualification standards, except for minimum education requirement is appropriate.

Displacement of an employee in the same subgroup is called "retreating."

5h(1)

(b) Group III employees in the competitive service have no right of assignment when they are released from their own competitive levels. However, a group III-B employee from another competitive level may be displaced to place a group III-A employee.

(2) Qualifications and Exceptions

(a) An employee meets OPM standards and requirements for the position; is physically qualified, with reasonable accommodations, as appropriate, to perform the duties of the position, and meets special OPM-approved qualifying conditions.

o An employee's sex cannot be considered in determining if the employee is qualified for a position, except for positions for which OPM has determined certification of eligibles by sex is justified.

o An employee released from a competitive level during a leave of absence because of a compensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury.

(b) If a supervisor believes that an employee scheduled for reassignment to a position under the supervisor's jurisdiction cannot assume the duties of the position without causing undue harm to the work program, the supervisor will bring the matter to the attention of the appropriate office.

If the office agrees with the supervisor, it will prepare a written statement to PFM/PM stating the reasons. If PFM/PM considers the reasons valid, the reassignment is not made; if PFM/PM disagrees, it will try to resolve the matter. If agreement cannot be reached, PFM/PM determines the final action.

(c) The Agency may assign an employee to a position without regard to OPM standards and requirements if the employee meets any minimum education requirement for the position and if the Agency determines that the employee has the capacity, adaptability and special skills to satisfactorily perform the duties and responsibilities of the position.

5h

(3) Offers

(a) An available position satisfying an assignment right must be in the competitive service and in the competitive area; last at least three months; be one for which the released employee qualifies; have a representative rate no higher than the representative rate of the position from which the employee is released; and be occupied by another employee subject to displacement by the released employee.

(b) If the Agency determines that a preference eligible employee with a compensable service-connected disability of 30% or more is not able to fulfill the physical requirements of a position the employee otherwise would have been offered, the Agency must notify the employee of the determination, the reasons for it and the right to respond to OPM. The Agency may not assign any other person to the position until OPM has made a final determination concerning the physical qualifications of the employee for the position.

Any offer is permissible if the employee **voluntarily accepts it with full knowledge of alternative reassignments** to which he/she may be entitled.

(c) The Agency may offer a vacant other-than-fulltime position to a fulltime employee or offer a vacant fulltime position to an other-than-fulltime employee in lieu of separation.

(d) An employee's pay in the new position is fixed at a regularly scheduled rate that preserves, as nearly as possible, the employee's last earned rate. However, preservation of pay does not require advancement in grade or position or assignment to a position with a higher representative rate during RIF, nor can it be the basis for mandatory reassignment to a position for which the employee is not fully qualified.

(e) When an employee is entitled to and qualified for reassignment to two or more positions, PFM/PM selects the position to be offered.

(f) An employee given one reasonable offer has no right to further offers if he/she accepts or rejects the offer or fails to reply. If an employee in subgroup AD is not able to fulfill the physical requirements of a position to which he/she would otherwise have been assigned under retention preference regulations, the employee is entitled to advance notification, a 15-day response period and final decision by PFM/PM.

5

(g) An employee has five workdays to accept or decline an offer.

(h) An employee who has no assignment right or does not accept an offer shall be furloughed or separated.

(i) The rejection of a reasonable offer does not constitute a basis for the separation of an employee from the rolls by RIF action at a date earlier than that specified in the advance RIF notice.

i. Assignment Rights

(1) Bumping

(a) Upon release from a competitive level, an eligible employee is entitled to bump to an available position that requires no reduction or the least possible reduction in representative rate:

--when the occupied position is held by an employee in a lower tenure group or in a lower subgroup within the released employee's own tenure group and

--when the occupied position is the same grade or no more than three grades or three grade-intervals (or equivalent) below the position from which the employee is released.

(b) The requirement that the occupied position be held by an employee in a lower subgroup means:

--a subgroup IAD employee has bumping rights over IA, IB and groups II and III employees;

--a subgroup IA employee has bumping rights over IB and groups II and III employees;

--a subgroup IB employee has bumping rights over group II and III employees;

--a subgroup IIAD employee has bumping rights over IIA, IIB and group III employees;

--a subgroup IIA employee has bumping rights over IIB and group III employees;

--a subgroup IIB employee has bumping rights over group III employees.

5i

(c) The lowest grade to which an employee may bump is based on the position from which the employee is released regardless of how the employee progressed to that position.

(2) Retreating

(a) Upon release from a competitive level, an eligible employee is entitled to retreat to an available position that requires no reduction or the least possible reduction in representative rate when the occupied position is:

--held by an employee with a later service date in the same subgroup;

--the same grade or not more than three grades or three grade-intervals, or equivalent, below the position from which the employee is released. The position may be up to five grades, or intervals or equivalents, lower if the released employee is preference eligible with a compensable service-connected disability of 30% or more;

--the same position or essentially identical to a position previously held by the released employee in any federal agency; and

--held by an employee with a current annual performance rating no higher than minimally successful when the released employee's rating is minimally successful.

(b) The requirement that the occupied position be held by an employee with a later service date in the same subgroup takes into account tenure group.

(c) Although an employee may not retreat to a job in a different competitive area, he/she may retreat to an position in the current competitive area essentially identical to one held in the same or different competitive area in the current agency or in a different agency.

(d) In determining retreat rights, a position is considered essentially identical to one previously held if the employee held the previous position as a competing employee and the Agency determine that the two positions are enough alike that they would be placed in the same competitive level if they were in the same competitive area.

(e) The lowest grade to which an employee may bump is based on the position from which the employee is released regardless of how the employee progressed to that position.

5i

(3) Grade Versus Grade-Intervals

The grade limits of an employee's assignment rights are determined by the grade progression of the position from which the employee is released. Employees are allowed to exercise their assignment rights to positions up to three grades, or three-grade intervals, lower than the position from which they are released.

Determination of grade interval progression for:

General Schedule positions

--Employees released from two-grade interval positions have assignment rights to positions at all grade levels within their grade limits, including those not part of the two-grade progression. Example: an employee released from a GS-11 position that progresses GS-5-7-9-11 potentially has bump and retreat rights to GS-6, 8 and 10 positions even through those grades are not part of the two-grade progression.

--The use of grade intervals extends only to the entry level of the position having a two-grade progression. Determination of grade limits below this are made on a one-grade basis. Example: an employee released from a GS-9 position that progresses GS-5-7-9 may bump and retreat to positions as low as GS-4.

--The difference between successive grades in a one-grade occupation is a grade difference and the difference between successive grades in a multigrade occupation is a grade interval difference. Example: An employee released from a GS-9 position in a one-grade occupation that progresses GS-6-7-8-9 may bump three grades lower to GS-6 and retreat three grades lower to GS-6.

--For mixed interval jobs, the limits follow the reverse of the career progression. Example: an employee in a GS-9 position that progresses GS-5-7-9 may bump and retreat to GS-5.

Positions not covered by the General Schedule

--A normal line of progression for each occupational series and grade level is established and bump and retreat limits are applied. Example: if the Agency determines that the normal line of progression in a particular series for a WG-12 employee WG-5-8-10-12; a WG-12 employee in the series has bump and retreat rights to positions as low as WG-5.

[5i]

--Once the normal line of progression is established for a particular series and grade level, the same grade level limits for bump and retreat are applied to all employees in that series and grade level without regard to an employee's actual progression to that grade level. Determination of grade limits below the starting point of the normal line of progression is made on a one-grade basis. Example: an employee released from a WG-8 position that progresses WG-5-7-8 has assignment rights to positions as low as WG-4.

--In some cases the Agency may determine there is no line of progression to a particular series and grade level. In such cases, the Agency will provide the employee with assignment rights to positions up to three grades lower, as determined on a one-grade basis.

The lowest grade to which an employee may bump or retreat is based on the position from which the employee is released regardless of how the employee progressed to that position. Example: an employee may have been reassigned from a one grade-interval job to his/her current two grade-interval job. Once the Agency determine the lowest grade to which an employee is entitled, it must determine whether any available positions exist within these grade limits.

When two positions are in different pay schedules, representative rates are used to determine equivalent grade levels and the best offer. The highest grade permitted in the other pay schedule is the highest grade with a representative rate that does not exceed the representative rate of the employee's current position. The lowest grade permitted in the other pay schedule is the lowest grade with a representative rate that is not less than the representative rate of the lowest grade to which the employee has bump and retreat rights. Example: An AD-1 employee has a representative rate of $36,000; a GS-13 has a $41,358 representative rate, which exceeds the AD-12 representative rate; a GS-12 has a $34,781 representative rate. Since this is the highest GS grade representative rate that does not exceed the employee's current representative rate of $36,000, GS-12 is the highest grade GS position to which the employee may be assigned.

j. RIF Notice

A RIF notice is a written communication to an individual employee announcing that he/she will be affected by a RIF action. The notice may be specific or general. The Agency may issue a **specific** RIF notice at least 30 days before the RIF effective date, or a **general** notice at least 30 days before the RIF effective date **and** follow it with a specific notice at least 10 days before the RIF effective date. A.I.D. may **not** issue a RIF notice more than 90 days before a RIF action except by prior OPM approval.

[5j]

The employee must have a **full** 30-day notice; the notice period begins the day after the employee receives the notice. When the Agency retains an employee under a mandatory or permissive temporary exception, the notice will cite the date on which the retention period ends as the effective date of the employee's release from the competitive level. Saturday, Sunday or a legal holiday may **not** be counted as the last day of the minimum notice period. This applies in computing 10-day, 30-day and 90-day periods for purpose of issuing RIF notices.

(1) General Notice

A preliminary general advance notice may be issued to employees likely to be affected if all individual actions cannot be determined in time to meet the 30-day limitation for taking a specific action. A general notice includes the following information:

(a) It is anticipated that an employee in his/her competitive level will be reached for RIF action that may result in the employee's separation unless he/she can be placed in another position, but a specific action has not yet been determined.

(b) The employee will be issued a specific notice as soon as the Agency has determined the action necessary in the employee's case.

(c) Unless the general notice is followed by a specific notice or by a renewal, it is automatically cancelled.

(d) The employee should not file an appeal to the Merit Systems Protection Board (MSPB) or a grievance under the negotiated procedure before a specific RIF action is taken.

(2) Specific Notice

A specific notice is issued to each employee to be separated, furloughed for more than 30 days, or reduced in grade or pay. The notice includes specific information regarding the action to be taken. If a general notice was issued, the proposed action is not put into effect until at least 10 days after receipt of the specific notice.

Specific notices are issued in triplicate for the employee to use to seek placement under OPM's Displaced Employee Program or to appeal to the MSPB.

5j(2)

(a) Contents

The specific notice must include:

--the action to be taken;

--the effective date;

--the employee's competitive area, competitive level, subgroup, service date and annual performance ratings during the last three years;

--the place where the employee may inspect the regulations and records pertinent to his/her case;

--the reasons why any employee with lower retention standing is retained in the same competitive level if a permissive or mandatory exception was invoked;

--the employee's appeal or grievance rights;

--information on eligibility for assistance under the Displaced Employee Program or for entry on the Agency's Reemployment Priority List.

(3) New Notice

A new notice of at least 30 days is required when the action to be taken is more severe than that first specified. A less severe action may be taken without amending a notice or changing the effective date.

(4) Expiration of Notice

A general notice expires on the date specified in the notice unless on or before the expiration date the Agency renews the general notice or issues a specific notice. The Agency may cancel an unexpired general notice or renew it for additional periods not to exceed the maximum period.

A specific notice expires except when followed by the action specified or by action less severe than specified before the Agency takes action. The Agency cannot take action before the effective date in the specific notice. An action taken after the specific date in the specific notice is not invalid for that reason except when challenged by a higher standing employee in the competitive level who is reached out of order for RIF as a result of the action or when it results in a notice period longer than the maximum allowed.

5j

(5) Employee Status

(a) When possible, an employee is to be retained on active duty during the notice period. If the Agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his/her consent, on leave without pay with his/her consent, or in a nonpay status without his/her consent.

(b) Employees who believe they have been placed in nonpay status in violation of MSPB regulations or negotiated grievance procedures, as appropriate, may appeal or grieve such action.

(c) Sick leave may be granted during all or any part of the advance notice period, provided the employee is in a pay status (duty or leave) when leave is requested and incapacity is established. The availability of additional sick leave may not be used as a reason to extend the notice period.

(6) Resignation

If an employee resigns after receipt of the advance RIF notice, the customary advance notice of resignation will be waived. The employee will be informed that resignation prohibits entry of the employee's name on the Reemployment Priority List. A resignation acceptable to the Agency will be effective the date the employee specifies or the last workday as described in the advance notice, whichever is earlier.

k. Reemployment Priority List (RPL)

PFM/PM establishes and maintains a RPL for each commuting area from which career or career-conditional employees in the competitive service were separated. Employees are placed on the list for all competitive positions for which they are qualified and available.

(1) Eligibility. Group I and II employees in the competitive service separated from Agency rolls by RIF and who have not declined assignment are eligible. The name of a group I employee remains on the RPL for two years from the date he/she was separated; the name of a Group II employee remains on the RPL for one year from the date the he/she was separated.

Fulltime and other-than-fulltime employees are placed on separate lists; fulltime employees are considered only for fulltime positions; other-than-fulltime employees are considered only for other-than-fulltime positions.

5k(1)

An employee who applies for retirement retains his/her priority until actual retirement or some other conditions causes the employee's name to be removed from the RPL.

Each employee is entered on the RPL for all positions for which qualified and available. Eligibility is not limited to the last grade held by the employee. The employee's eligibility and A.I.D.'s obligation extend to all positions and grades he/she qualifies for, including grades higher than ever held by the employee.

(2) Deletion from the RPL

An employee's name is deleted when the employee submits a written request asking that his/her name be deleted. An employee's application for retirement is **not** a request to delete his/her name from the RPL.

A fulltime employee's name is deleted when the employee accepts a nontemporary, fulltime competitive position, or declines a fulltime, nontemporary competitive position with a representative rate the same as, or higher than, the position the employee was separated from.

An other-than-fulltime employee's name is deleted when the employee accepts a nontemporary, competitive position, or declines a nontemporary, competitive position with a representative rate and regularly scheduled administrative workweek the same as, or higher than, that of the position the employee was separated from.

(3) Restrictions on Filling Positions

No competitive position for which there is a qualified person available on the RPL may be filled by the transfer of an employee from another agency, or by the new appointment of any person except a 10-point preference eligible. These restrictions do not apply if all qualified persons on the RPL decline or fail to respond to offers of reemployment to the position.

There are no restrictions on the filling of vacant positions by the promotion, demotion or reassignment of any qualified employee on the rolls; the reinstatement, with no break in service, of an A.I.D. employee returning to the competitive service from an excepted position; or the reemployment of a person exercising restoration rights after military service.

5k

(4) Order of Selection

Selections for hiring from the RPL are made in subgroup order, but not necessarily in the order of standing within subgroups.

1. Appeals

(1) Generally, an employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude RIF **must** use the negotiated grievance procedure (see Att. 2D) to grieve a RIF action, and may not appeal RIF actions to MSPB.

(2) Except as provided above, an employee who has been separated or demoted by RIF action may appeal to the MSPB.

(3) An employee who has been reassigned may **not** appeal the action.

(4) When the Agency issues a decision notice to an employee on an MSPB-appealable matter, the Agency provides the employee with specific information on the appeal process.

(5) Appeals filed with the MSPB must be filed during the 20 calendar days beginning with the day **after** the effective date of the action being appealed. Appeals are not accepted on or before the effective date.

6. Transfer of Function

In a transfer of function, the operation of the function ceases in one competitive area and is carried on in an indentifiable form in another competitive area where it was not being performed at the time of transfer. A continuing function does not include work solely associated with the completion of a terminated program.

a. Identification of Employees and Positions

The competitive area losing the function is responsible for identifying positions and competing employees with the transferring function. Identification Method One or Two must be used, as applicable:

(1) Identification Method One applies to an employee who performs the function during a majority of his/her work time, or, regardless of the time, the function includes the employee's grade-controlling duties.

6a(1)

(a) The losing competitive area determines the number of positions it needs to perform the transferring function and establishes retention registers of competing employees who perform the function but are **not** covered by Method One.

(b) To identify employees for transfer, the losing competitive area uses the retention registers to identify employees in the inverse order of their retention standing. If this procedure would result in the separation or demotion by RIF of any employee with higher retention standing, the competing employees on that register are identified for transfer in the actual order of their retention standing.

b. Personnel Management Implications

(1) Employees of the losing competitive area:

(a) Right of employees to transfer. Regardless of an employee's personal preference, a competing employee identified for transfer has no right to transfer with a function unless the alternative is separation or downgrading in the competitive area losing the function.

(b) Separation of employees who refuse to transfer. If an employee declines to transfer with his/her function, he/she may be separated using adverse action procedures.

(c) Use of RIF regulations. A RIF may not be carried out for employees who decline to transfer with their function but the losing competitive area may include such employees as part of a concurrent RIF conducted for other reasons.

(2) Employees of the gaining competitive area:

(a) Effect on employees. Transfer of function provisions do not affect employees of the gaining competitive area if the transfer does not require a RIF in that organization.

(b) Use of RIF regulations. The gaining competitive area may conduct a RIF because of the transfer of function. Competing employees identified for transfer by the losing competitive area have a right to transfer to the gaining competitive area before it conducts a RIF and compete in a RIF on retention registers comprised of themselves and employees working on the gaining competitive area at the time of transfer.

6b(2)

(c) Relocation not necessary. The gaining competitive area may determine the retention rights of incoming employees in a transfer of function without an actual or paper transfer of the employees from the competitive area. The retention registers of the function being transferred are combined with the appropriate registers of the competitive area receiving the function. Incoming employees compete on the basis of the positions held prior to the transfer. If any incoming employees are unsuccessful in competing for positions in the gaining competitive area, the losing competitive area may act as agent for the gaining competitive area and separate the employees on the effective date of the transfer of function. Separated employees have no assignment rights in the losing competitive area, and are placed on the reemployment priority list of the gaining competitive area.

(d) Status of competitive service positions. When the position of an employee who is in the competitive service and who has competitive status is moved to a new organization as part of a reorganization or transfer of function, the position remains in the competitive service during the employee's incumbency.

(3) Transfer of positions for liquidation. Employees whose positions are transferred solely for liquidation and who are not identified with operating functions specifically authorized at the time of transfer to continue in operation for more than 60 days, are not competing employees for positions in the gaining competitive area. The gaining competitive area may separate these employees by RIF. An employee whose position is transferred solely for liquidation is placed on the reemployment priority list of the gaining competitive area.

(4) Volunteers. The losing competitive area may permit other employees of the Agency to volunteer in place of employees identified under Method One or Two. Employees may volunteer only if no competing employee identified under Method One or Two is separated or demoted because a volunteer transferred in place of him/her to the competitive area. If the number of employees who volunteer exceed the number of employees required to perform the function in the gaining competitive area, the losing competitive area may give preference to the volunteers with the highest retention standing.

c. Preparing Employees for Transfer

The Agency may ask employees in a canvass letter whether they would consider transferring with the function when it moves to a new geographic location. The letter includes an explanation of what is involved in accepting or declining:

(6c)

(1) Acceptance to transfer with the function indicates a willingness to transfer to the receiving organization. A canvass letter is **not** binding; the employee may change his/her mind without penalty.

(2) If the employee declines, the Agency has the right to propose the employee's separation under adverse action procedures. By electing not to move, the employee is eligible for OPM and Agency placement assistance.

d. Appeal or Grievance Rights. An employee has no right to appeal a transfer of function, but may include transfer of function as part of an appeal or grievance of a subsequent RIF or adverse action if he/she believes such resulted from the transfer of function.

7. Voluntary Early Retirement

The Agency must request early retirement authorization from OPM. The purpose of voluntary early retirement is to allow eligible employees not facing involuntary separation to retire early, thereby creating job vacancies for employees who would otherwise be separated or downgraded.

a. Eligibility

Employees in the activity for which retirements have been authorized may retire at age 50 years with 20 years of service or at any age with 25 years of service.

(1) An employee must be on the rolls of the activity for which early retirements are authorized at least 30 calendar days before the Agency's request to OPM and must be on the rolls of the activity without a break in service after that time.

(2) All employees who elect to retire voluntarily must be off the Agency's rolls no later than the expiration date of the authority, or the date OPM or the Agency terminates the authority.

b. Voluntary Versus Discontinued Service Retirements

An employee facing involuntary separation may have his/her retirement processed as a voluntary retirement or as an involuntary separation (to apply for discontinued service retirement) depending on his/her interest in subsequent reemployment.

ATTACHMENT 2A

A.I.D. COMPETITIVE AREAS

1. Administrator's immediate office and support staffs:
   - Office of Legislative Affairs
   - Board of International Food and Agricultural Development
   - Office of Small and Disadvantaged Business Utilization
   - Office of Equal Opportunity Programs
   - Office of U.S. Foreign Disaster Assistance
   - Office of the Science Advisor
   - Office of Private Sector Coordinator
   - Office of International Training
2. Bureau for Food for Peace and Voluntary Assistance
3. Bureau for Management
4. Bureau for Private Enterprise
5. Bureau for Program and Policy Coordination
6. Bureau for Science and Technology
7. Bureau for Africa
8. Bureau for Asia and Near East
9. Bureau for Latin America and the Caribbean
10. Bureau for External Affairs
11. Office of the Inspector General
12. Office of General Counsel

SUPPLEMENT 2B

FURLOUGH - CIVIL SERVICE

1. Purpose

This supplement provides the policies, authorities, regulations and procedures to be followed in furlough actions affecting A.I.D. employees serving in positions located in the continental United States.

2. Authorities and References

a. Civil Service Reform Act of 1978
b. 5 U.S.C. 75
c. 5 U.S.C. 7513
d. 5 CFR 351, 752
e. FPM 351 (Reduction in Force)
f. FPM 752, Subch. 3 (Adverse Action; Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, and Furlough for 30 Days or Less)

3. Definitions

Furlough. The placing of an employee in a temporary nonduty, nonpay status on a continuous basis, e.g., 10 consecutive days, or on a noncontinuous basis, e.g., one day a week. Reduction in force procedures must be followed to furlough an employee when the furlough will be for more than 30 consecutive days, or more than 22 work days if done on a noncontinuous basis, and is caused by a shortage of funds or other nondisciplinary reasons.

See 2C for additional definitions.

4. Policies

a. Furlough will be initiated regardless of race, sex, color, age, religion, national origin, handicapping conditions, marital status or political affiliation.

b. Probationers, temporary employees and nonpreference eligibles in the excepted service will be included in any Agency furlough.

c. Furlough will not be for more than one year and will be used only when it seems certain that the reduction is temporary and that furloughed employees will be returned to duty in the position from which furloughed. Furlough is **not** a commitment of recall.

(4)

d. Before initiating a furlough, Agency management and operating officials will explore other means of responding to the need for a furlough.

e. The Agency may furlough or separate an employee only when the employee has no right of assignment to another position or turns down an offered position satisfying the assignment right. The Agency decides if a furlough is appropriate; if not, the employee is separated.

f. The Agency may not separate a competing employee while an employee with lower retention standing in the same competitive level is on furlough.

g. When the Agency recalls employees to duty, it must recall them in the order of their retention standing, beginning with the highest standing employee.

h. The Agency will make certain that the burden of any furlough is equitably shared by employees so long as doing so does not interfere with appropriations or the effective and efficient management of the Agency's programs, operations and resources.

i. Parttime employees will be furloughed in proportion to their schedule.

j. A reasonable effort will be made to accommodate expressed personal preferences of employees (e.g., a desire to combine leave without pay and furlough into a consecutive period or a desire to have some income every pay period) in scheduling furloughs to the extent that the proposal is consistent with work requirements and budgetary constraints.

k. The Agency will not fill a position, except by internal placement, when an employee on furlough is qualified and available for a position at the same or lower grade from which furloughed.

l. The Agency will not separate an employee through RIF while an employee with lower retention standing in the same competitive level is on furlough.

m. If the situation changes and the Agency determines a furloughed employee cannot be recalled within the one-year period, the employee must be separated. If some, but not all, furloughed employees in a competitive level must be separated, employees are selected for

(4)

separation by retention standing beginning with the lowest standing employee. A new RIF notice of separation must be given to furloughed employees at least 30 days prior to separation and at least 30 days prior to the end of the one-year furlough period. The separation of a furloughed employee is a new RIF action and the required procedures are followed.

n. If a furloughed employee refuses or does not respond to an Agency notice to return to duty, the Agency may separate the employee by RIF effective on the specified date of recall. A new RIF notice of separation is not required.

5. Responsibilities

a. Administrator

Makes final decision on using furlough and on the extent and duration of furloughs.

b. Director, Office of Personnel Management (PFM/PM/OD)

Carries out the furlough in consultation with affected Agency elements.

6. Procedures

a. For furloughs of more than 30 consecutive calendar days, RIF procedures will be used. Employees will be given 30 days' advance written notice by letter or telegram or other means stating the specific reasons for the furlough and its duration. The advance notice of a proposed furlough shall include, but is not limited to:

--reason for the furlough;

--maximum length of the furlough and if know, more definite and detailed specifications, such as specific dates and length of the furlough;

--the basis for selecting a particular employee for furlough if not all employees are being furloughed;

--notice as to the place where regulations and records pertinent to the action may be inspected;

--right of employees to respond within 10 workdays to the proposed furlough;

(6)

--entitlement to official time to prepare response;

--entitlement to representation;

--entitlement to request Leave Without Pay in lieu of furlough.

The advance written notice and opportunity to answer are not necessary for a furlough without pay due to unforeseeable circumstances, such as lapses of appropriations, sudden breakdowns in equipment, acts of God or sudden emergencies requiring immediate curtailment of activities. In such cases, employees will be given as much notice as feasible.

b. For furloughs of 30 days or less, there is an exception to the 30 days' advance written notice and the opportunity to answer when furlough is due to unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. Aside from the waiver of these two requirements, the employee is entitled to the other requirements provided by law and regulation, including the right to appeal.

When some but not all employees in a given competitive level are being furloughed, the notice of proposal shall state the basis for selecting a particular employee for furlough as well as the reasons for the furlough.

The Agency must be prepared to show that the stoppage was caused by conditions that no level of Agency management having responsibility for the activity could change.

7. Employee Rights and Entitlements

a. Employees in a furlough status cannot be required to perform official duties, nor can the Agency accept the voluntary services of employees in furlough status.

b. Employees on detail or other assignment whose salaries are not paid out of the Agency's operating expenses account are not subject to furlough when the reason for the furlough is a shortage of funds.

c. Employees may engage in outside employment while on furlough.

d. Employees on court duty while on furlough may retain court pay.

e. An employee may not be placed on paid leave in lieu of furlough, except in cases of furloughs resulting from a lapse of appropriation. In such cases, employees granted (prior to the lapse) accrued leave to begin prior to or after the lapse may be permitted to use such leave.

(7)

f. Employees cannot be furloughed on holidays, i.e., will not be involuntarily placed in a nonpay status on a holiday.

g. For career tenure, the first 30 calendar days is creditable service.

h. For health benefits, enrollment continues for 365 days with the government continuing payment of its contribution and the employee paying for his/her share. The employee's share will be deducted from any remaining biweekly pay; if pay is insufficient, the employee may pay the costs during or after returning from a furlough by check or payroll deduction.

i. For life insurance, enrollment continues for 12 consecutive months without cost to the employee or the Agency.

j. For retirement purposes, an aggregate nonpay status of six months in any calendar year is creditable service. Coverage continues at no cost to the employee while in a nonpay status; when an employee is in a nonpay status for only part of a pay period, his/her contributions are adjusted in proportion to his/her basic pay.

k. For within-grade increases, an aggregate of two workweeks nonpay status in a waiting period is creditable service for steps 2, 3 and 4 of the General Schedule; four workweeks for steps 5, 6 and 7; six workweeks for steps 8, 9 and 10. For prevailing rate employees, an aggregate of one workweek nonpay status is creditable service for step 2; three weeks for step 3; four weeks for steps 4 and 5.

l. For annual and sick leave, an aggregate of no more than six months nonpay status in a year is creditable service in computing annual leave accrual rates. When employees accumulate 80 hours of nonpay status, his/her annual and sick leave balances are reduced by the number of hours accrued in a pay period.

m. For severance pay, nonpay status is fully creditable for the 12-month continuous employment period requirement. An aggregate of six months nonpay status in a year is creditable service in the computation of severance pay.

n. For completion of probation, an aggregate of 22 workdays in a nonpay status is creditable service. Nonpay status in excess of the authorized amount extends the qualifying period.

o. For RIF, an aggregate of six months nonpay status in a year is creditable service.

p. An employee who has been furloughed for more than 30 days may appeal to the Merit Systems Protection Board.

ATTACHMENT 2B

CREDIT FOR PERFORMANCE

1. An employee's entitlement to additional service credit for performance is based on the employee's last three annual performance ratings of record received during the three-year period prior to the date of issuance of the specific RIF notice. If an employee had more than three annual ratings during the stated period, the three most recent ratings are used.

2. An employee who does not have three actual annual performance ratings of record during the three-year period prior to the date of issuance of specific RIF notice shall receive credit for an assumed rating of Fully Successful to bring the employee's ratings up to three.

3. The additional service credit an employee receives for performance shall be expressed as additional years of service and shall be based on the mathematical average (rounded to the next higher whole number) of the employee's last three (actual and/or assumed) annual performance ratings of record received during the three-year period prior to the date of issuance of a specific RIF notice. The value assigned to each annual performance rating of record is:

   --**Outstanding**, or equivalent, 20 additional years;
   --**Exceeds Fully Successful**, or equivalent, 16 additional years;
   --**Fully Successful**, or equivalent, 12 additional years.

   No additional service credit is given for performance ratings **below** Fully Successful.

4. The current annual performance rating of record shall be the last annual rating except that:

   --an employee who has received an improved rating following an opportunity to demonstrate acceptable performance shall have the improved rating considered the current annual performance rating of record;

   --an employee's current annual performance rating of record shall be presumed to the Fully Successful when the employee had been demoted or reassigned because of Unacceptable performance and as of the date of issuance of specific RIF notices has not received a rating for performance in the position to which demoted or reassigned.

SUPPLEMENT 2C

SEPARATION DURING PROBATIONARY PERIOD - CIVIL SERVICE

1. Purpose

This supplement provides the policies, authorities, regulations and procedures to be followed to separate A.I.D. employees who are on probation on initial appointment in the federal service to positions located in the continental United States.

2. Authorities and References

a. Civil Service Reform Act of 1978
b. 5 CFR 315
c. 5 U.S.C. 3321
d. FPM 315, Subch. 8 (Career and Career-Conditional Employment; Probation)

3. Definitions

a. Probationer. An employee who has not completed the probationary period.

b. Probationary period. The probationary period, one year from the date of the employee's initial appointment to the competitive service, is a part of the examining process to determine an employee's eligibility and suitability for retention in the competitive service.

4. Policy

Separation of an employee during probationary period will be initiated regardless of race, sex, color, age, religion, national origin, handicapping conditions, marital status or political affiliation.

5. Responsiblities

a. Civil Service Division (PFM/PM/CSP)

(1) Reviews investigation report or inquiry and/or the basis for the recommendation of the supervisor and head of office and determine appropriateness and feasibility of reassignment, disciplinary action or separation.

5a

(2) Confers with the administrative officer and/or head of office involved and prepares a letter for the signature of the Chief, PFM/PM/CSP.

(3) Extends in writing the time limit for the employee's reply when circumstances warrant.

b. Supervisors

(1) Examines and reports whether the work performance or conduct of the probationer demonstrates his/her fitness or qualifications for continued federal employment.

(2) Keeps probationer advised of his/her progress and deficiencies.

6. Reasons for Separation

a. An employee who is on probation while serving on initial appointment to the federal service may be separated:

(1) for unsatisfactory performance or conduct after appointment, based upon deficiency in duty performance, lack of aptitude or cooperativeness or undesirable suitability characteristics evidenced by the employee's activities during or outside official working hours;

(2) for unsatisfactory performance or conduct before appointment, based in whole or in part of an employee's conduct before employment, e.g., intentional falsification of application forms.

(3) at the direction of the U.S. Office of Personnel Management.

b. An employee who is on probation while serving in a supervisory or managerial position may be returned or reassigned to a nonsupervisory or non-managerial position or separated for unsatisfactory performance of supervisory or managerial responsiblities.

7. Procedures

a. For employees on probation while serving on initial appointment.

(1) for unsatisfactory performance or conduct after appointment, the Agency notifies in writing the probationer the reason for the proposed action, the effective date of the action and the Agency's conclusions on the employee's inadequacies of performance or conduct. The probationer does not have the right to reply.

7a

(2) for conduct before appointment, the probationer is entitled to advance notice, reasons for the proposed action, the right to reply in writing within 10 calendar days of receipt of the notice, consideration of his/her reply in reaching a decision, a decision, and information of his/her right to request the MSPB to review the procedure by which he/she was terminated. If, after this process, the Agency decides to proceed with the proposed separation, the probationer must receive a written decision stating the reasons or referring to reasons in the advance notice, the effective date, and right to appeal.

8. Appeal Rights

The Agency informs the probationer the specific basis upon which he/she can appeal the separation action to the Merit Systems Protection Board (MSPB), no later than 20 calendar days after the separation has been effected.

If the MSPB decides in favor of the appellant, the Agency will take corrective action in accordance with the decision and recommendation, unless the Agency petitions MSPB to reopen and reconsider the decision.

9. Timing of Separation

For employees separated for unsatisfactory performance or conduct after appointment or for conduct before appointment, the employee's separation must be effected before the employee has completed his/her probationary or period. Otherwise, procedures applicable to the separation of a career conditional employee who has completed his/her probationary period are mandatory.

ATTACHMENT 2D

GRIEVANCE PROCEDURE*

The negotiated grievance procedure detailed below is the one to be followed by an A.I.D. employee covered by the American Federation of Government Employees (AFGE). An employee covered by AFGE may **not** appeal RIF actions to MSPB.

STEP 1
Within 20 working days of the alleged violation or from the date the employee (grievant) became aware of the alleged violation, an employee or the union steward informally presents the grievance to the immediate supervisor or responsible official. At the grievant's request, an AFGE representative may be present at all discussions relating to the grievance.

If the grievance is not satisfactorily settled within 10 working days, the grievant or the steward puts the grievance in writing for a written response by the supervisor or responsible official.

Within 10 working days of receipt of the written grievance, the supervisor or responsible official provides the grievant a written decision, which should include the name and title of the A.I.D. official to whom the grievant may address a Step 2 grievance.

STEP 2
Within 10 working days of receipt of the Step 1 decision, the grievant may file a formal, written grievance, including a plain statement of the alleged violation and the relief requested, to the next-level supervisor or responsible official.

Within 10 working days of receipt of the written grievance, the supervisor or responsible official provides the grievant a written decision.

STEP 3
Within 10 working days of receipt of the Step 2 decision, the grievant and/or AFGE may submit the grievance to the Chief, Labor Relations Staff (PFM//PM/LMR). The submission must include the written material exchanged at the previous steps. The Chief, PFM/PM/LMR, or designee, will review the record of the case, investigate, meeting with the grievant and/or his/her AFGE representative, and give the grievant a written decision within 30 working days after receipt of the grievance and materials.

* Article 31, Grievance and Arbitration Procedure, Agreement Between the Agency for International Development and the American Federation of Government Employees, June 1987.

ATTACHMENT 2C

ORDER OF RETENTION

The names of competing employees are classified on a retention register on the basis of their tenure of employment, veterans preference, length of service and performance in descending order as follows:

1. Competitive Service

Group I. Employees serving under career appointments who have completed probation or who are not required to serve a probationary period.

Subgroup AD. Employees entitled to veteran's preference with compensable service-connected disabilities of 30% or more.

Subgroup A. Employees entitled to veteran's preference who are not in subgroup AD.

Subgroup B. Employees not entitled to veteran's preference.

Group II. Employees serving a probationary period and career-conditional employees.

Subgroup AD. Employees entitled to veteran's preference with compensable service-connected disabilities of 30% or more.

Subgroup A. Employees entitled to veteran's preference who are not in subgroup AD.

Subgroup B. Employees not entitled to veteran's preference.

Group III. Employees serving under indefinite appointment, temporary appointments pending establishment of registers (TAPER), term appointments, and employees serving in status quo or under any other nonstatus, nontemporary appointment.

Subgroup AD. Employees entitled to veteran's preference with compensable service-connected disabilities of 30% or more.

Subgroup A. Employees entitled to veteran's preference who are not in subgroup AD.

Subgroup B. Employees not entitled to veteran's preference.

2. Excepted Service

Group I. Permanent employees whose appointments carry no restriction or conditions such as definite or indefinite or specific time limitations.

Subgroup AD. Employees entitled to veteran's preference with compensable service-connected disabilities of 30% or more.

Subgroup A. Employees entitled to veteran's preference who are not in subgroup AD.

Subgroup B. Employees not entitled to veteran's preference.

Group II. Employees serving a trial period, or whose tenure is equivalent to a career-conditional appointment in the competitive service.

Subgroup AD. Employees entitled to veteran's preference with compensable service-connected disabilities of 30% or more.

Subgroup A. Employees entitled to veteran's preference who are not in subgroup AD.

Subgroup B. Employees not entitled to veteran's preference.

Group III. Employees whose tenure is indefinite, that is, without specific time limitation, but not actually or potentially permanent. Employees who complete one year of current continuous service under temporary appointment(s) are in this group.

Subgroup AD. Employees entitled to veteran's preference with compensable service-connected disabilities of 30% or more.

Subgroup A. Employees entitled to veteran's preference who are not in subgroup AD.

Subgroup B. Employees not entitled to veteran's preference.

Employees are arranged by years of service within each subgroup. The employee with the earliest service date is entered first. An employee receives performance credit when his/her performance meets certain requirements (see Att. 2B).

ATTACHMENT 2E

ILLUSTRATION OF A RETENTION REGISTER

Agency: Agency for International Development
Competitive Area: Bureau for Africa
Competitive Level: 01 Program Analyst, GS-345-13

Tenure Group and Subgroup	Service Date	Performance Credit	Total Points
GROUP I -- Career:			
Subgroup AD - Veteran Preference Eligibles with 30% or more compensable service-connected disabilities			
Henry Pence	07-19-42		
Carey Brice	08-05-45		
Richard Reese	05-20-57		
Subgroup A - Veteran Preference Eligibles			
Sam Smith	03-01-42		
John Brown	07-15-42		
Mary Davis	04-12-57		
Subgroup B - Nonveteran Preference Eligibles			
James Wanderer	10-09-39		
Jane Davis	12-18-45		
Alice Coe	08-23-54		
GROUP II -- Career-Conditional:			
Subgroup AD - Veteran Preference Eligibles with 30% or more compensable service-connected disabilities			
James Watkins	01-01-70		
John Matthews	01-14-72		
Joseph Kahn	02-20-76		
Subgroup A - Veteran Preference Eligibles			
Williams Black	11-03-73		
Roy Jones	07-26-75		
Frank Johnson	09-14-77		
Subgroup B - Nonveteran Preference Eligibles			
Ann Williams	02-20-76		
Arthur Riddick	05-28-77		
Constance Green	10-02-78		

Tenure Group and Subgroup	Service Date	Performance Credit	Total Points
GROUP II -- Indefinite:			
Subgroup AD - Veteran Preference Eligibles with 30% or more compensable service-service-connected disabilities			
Henry Simms	09-01-67		
Reggie Schools	10-11-69		
Richard Smith	11-18-71		
Subgroup A - Veteran Preference Eligibles			
Conrad Wilson	01-10-59		
Ellen Andrews	12-22-60		
Marvin Jackson	08-07-61		
Subgroup B - Nonveteran Preference Eligibles			
Lucy Robinson	07-01-42		
Ruth Murray	02-04-59		
Philip Norris	10-11-60		
Frances Allen	05-15-61		

(On a separate list, apart from the retention register)
Noncompeting employees:
All specifically limited temporary employees listed in any order.
All employees with unsatisfactory performance ratings listed in any order.

Circular to Ch 3, HB 30
(TM 30:12)

Department Notice

July 6, 1977

TO ALL EMPLOYEES
STATE, AID, USIA, ACDA

Foreign Service Retirement and Disability System - Mandatory Retirement

On June 28, 1977 a three judge District Court ruled unconstitutional section 632 (the mandatory retirement provision) of the Foreign Service Act of 1946, as amended, as a denial of equal protection.

This decision affects all employees of State, AID and USIA who are participants in the Foreign Service Retirement and Disability System.

The decision in effect changes the mandatory retirement age from 60 to 70.

The Department and the Agencies have not as yet decided whether to recommend to the Solicitor General that the ruling be appealed to the Supreme Court.

Participants in the Foreign Service Retirement System reaching age 60 in July (or in subsequent months) have been (may have been) notified that their retirement will be effective no later than the end of the month in which they attain age 60. Employees in receipt of such information are advised that such notifications are withdrawn.

The employee may, of course, at his/her option, request that the retirement be processed on a voluntary basis under the provisions of section 636 of the Foreign Service Act of 1946, if they meet the age and service requirements contained in 3 FAM 672.1. Employees wishing to pursue this avenue of action are requested to advise personnel headquarters promptly of their intentions. They must also submit Form JF-32, Application for Retirement, to State (PER/ES/RET), AID (PM/PS), USIA (IPT/SR).

Career Counseling Officers of the Department and the Agencies will be in direct communication with affected employees about their assignments.

This Notice is intended for 3 employees. Please read and pass on, thank you.

Chapter 2.1

INVOLUNTARY SEPARATIONS - FOREIGN SERVICE

2.1A Reductions in Force - AID/W -- Deleted (see Ch. 2)

2.1B Reduction in Force - AID/Washington Employees -- Deleted (see Ch. 2)

2.1C Reduction in Force - A.I.D. Foreign Service

1. General

This section prescribes the administrative actions to be taken to avoid a reduction in force (RIF) and the policy and procedures to be followed in effecting RIF of A.I.D. unlimited Foreign Service (FS) employees when such reduction is necessary.

2. Authorities

a. Sec. 621(a) of the Foreign Assistance Act of 1961, as amended.
b. 5 U.S.C. 2108

3. Applicability

This section applies to all A.I.D. FS employees who have limited or unlimited appointments under Section 625(d)(2) of the Foreign Assistance Act. However, the provisions governing the RIF process apply only to the unlimited Section 625(d)(2) employee.

4. Policy

a. A RIF action affects the livelihood and careers of employees directly involved and creates feelings of anxiety and insecurity throughout the organization. Through careful planning and use of other administrative techniques, management officials at all organizational levels should seek to avoid the necessity of entering into a formal RIF action.

The Agency pledges to conduct a RIF only when a surplus of personnel cannot be relieved by other means, such as reassignments, retraining and restricting to the extent possible the employment of individuals such as contractors, consultants, experts and PASA employees.

In addition, on request by affected employees, the Agency will provide specific outplacement assistance (with respect to employment in the private sector and transfers to other agencies) and counseling concerning voluntary retirement.

C4

b. The policy and procedures of this chapter are designed to:

(1) provide the greatest possible job opportunity for the A.I.D. unlimited FS employees and, for a formal RIF, competition on a worldwide basis;

(2) accord with the FS rank-in-person personnel system;

(3) assure that, to the maximum extent possible, any RIF is carried out in the best interests of the Agency, its FS employees and the professionalism of A.I.D.'s Foreign Service;

(4) define, strengthen and protect the rights of A.I.D. FS employees.

5. Definitions

a. Active Duty Period is that portion of the "notice period" (see 5f) in which an employee is in work status.

b. Competitive Area for FSR or FSS employees is worldwide.

c. Competitive Level consists of all unlimited FS employees (regardless of salary funding) in the same service category (FSR or FSS), the same occupational category, and the same personal class as that of the unlimited employee who is initially surplus. The competitive level of a FS employee is determined by his/her permanent class even if he/she is serving at a higher class based on temporary promotion. Employees in the same competitive level compete only within their own competitive level.

d. Government Service means the total of all periods of creditable military service and civilian service in the executive, legislative, and judicial branches of the Federal Government and in the government of the District of Columbia. As a general rule, the service date shown on form AID 4-520, Notification of Personnel Action, is used in computing Government service (see 2C9d(3)).

e. Mission includes Mission offices, "Delegated Posts," Regional and Interregional Organizations (see Handbook 17, Chapter 30), and AID/W Bureaus and Staff Offices to which employees are assigned.

C5

f. Notice Period means the initial period stipulated in the original RIF notice issued to an employee which tells him/her the period of time he/she is to be carried on the rolls of the Agency prior to his/her separation (see 2C10a(2)).

g. Occupational Categories for RIF purposes shall consist of all positions which are so similar in all important respects that the Agency can readily move an employee from one position to another without significant training and without serious harm to the Agency's program. Characteristics shared by all positions in an occupational category are similarity of duties, responsibilities, pay schedule, and terms of appointment; and similarity of requirements for experience, training, skills and aptitudes. The occupational code of employees on a complement is that of the last permanent position, either overseas or in the United States.

h. Primary Skill Code represents the skill in which the employee is best qualified by experience, education and training, even though he/she may not currently occupy a position with that code. Secondary and tertiary skills codes are assigned to the extent that the employee's record reflects the possession of other skills in addition to the primary skill.

i. Personnel Office means the respective unit in OPI responsible for FS personnel activities.

j. Reduction-in-Force (RIF) means the involuntary separation from the A.I.D. Foreign Service of one or more unlimited employees in order to reduce the number of Foreign Service employees. RIF may be necessitated by conditions in or outside the Agency, such as lack of funds, employment limitation, reorganization, decrease in work, or similar reasons. The term does not apply to such actions as the termination of limited or temporary appointments, retirement of employees, and separation actions based on deficiency in conduct or performance or upon other reasons which will promote the efficiency of the service, or separation actions taken in the interest of national security.

k. Geographic Bureau includes within its meaning the geographical organizational division responsible for employees assigned within its geographic region, and AID/W Bureaus and Staff Offices for nonregional overseas personnel and rotates as appropriate.

C5

l. Retention Register means the listing of all unlimited employees in a competitive level, arranged by tenure groups according to their relative retention standing within the groups.

m. Retention Standing means precise rank among competing employees on a retention register.

n. Tenure Group means the group into which employees of the same competitive level are classified, based on type of appointment and entitlement to veteran's preference, for the purpose of determining standing.

o. Veteran-Preference Employee means a person entitled to preference under 5 U.S.C. 2108.

6. Identification of Occupational Specialty Codes for RIF Purposes

Codes are identified as follows:

a. Positions are grouped initially on the basis of the four-digit occupational codes included in the Agency's Position Management Handbook and are analyzed in terms of the characteristics specified in 5g above.

b. If it is determined that all positions in that initial grouping share those characteristics, the four-digit grouping constitutes an occupational category for determining competitive level.

c. If it is determined that all positions in that initial grouping do not share those characteristics, as many subgroupings will be established as are necessary to differentiate between positions with different characteristics. Each subgrouping so established constitutes the occupational category for determining competitive levels.

7. Assignment of Skill Codes

Employees are assigned primary skill codes and may be assigned secondary and tertiary skills codes, based on their overall record of experience, education, and training. Skills codes are assigned only to the extent that the employees' skills level, recency of experience, education, and training and length of service in the skill and class reflect usefulness to A.I.D. programs.

C7a

a. Skills codes are established in consultation with the employee as follows. On the basis of the review of an employee's file, the Agency initially determines the appropriate skills codes to be assigned and notifies the employee accordingly. Employees are given 30 days from receipt to comment; employees who do not submit comments are considered to concur in the codes assigned. If an employee disagrees with assigned coes, the matter is reviewed by the Chief, PFM/FM/FSP.

b. Skills codes are reviewed periodically, but not less than every two years, and changed as necessary to accurately reflect the updated record of employee's experience, education and training, taking into account any new position codes established. When codes are changed, employees will be so informed and given an opportunity to comment in accordance with paragraph 2C6a.

8. Action to Avoid RIF

a. Mission/AID/W

(1) Use of Present Staff

As a normal part of Mission management, likely situational changes are studied for probable effect upon staffing needs. Policy changes, fund limitations and shifts in program emphasis are among the reasons for changed personnel requirements. Mission management seeks to adjust its present staff by requesting reassignment of employees or submission of SPARs to realign duties in order to take advantage of demonstrated and potential employee abilities, skills and knowledge, and to provide training and experience opportunities to accommodate shifting staffing needs.

(2) Notification of Surplus Employees

If a Mission determines that it will have a surplus of employees, it submits to PFM/PM/FSP, through the appropriate Geographic Bureau, SPARs abolishing the positions to be vacated, specifying the date positions are to be abolished. Offices and nongeographic Bureaus will submit their SPARs directly to PFM/PM/FSP. The appropriate Bureaus/Offices will review with PFM/PM/FSP the proposed actions creating a surplus of employees in the light of total Agency human resources needs.

b. AID/W Action

(1) Initial Placement Effort

PFM/PM/FSP will undertake positive placement efforts for the surplus employees to meet worldwide staffing requirements.

C8b(1)

(2) Placement Action

(a) Before any career employee is separated by RIF action, the Agency shall consider him/her for possible reassignment to a vacant position for which he/she is qualified and which has the same class as the employee or is one class above or one class below.

(b) A career employee shall not be released from his/her competitive level in a RIF until all noncompeting limited employees in the same AOSC and with the same personal class as the employee, or one class above or one class below have been released.

(c) A career employee shall not be affected by RIF if there is a continuing position in another occupational category with the same code as the employee's primary skills code and that is occupied by a limited employee with the same class as the employee, or one class above or one class below.

(d) Management will consider the implementation of the following described assignment rights provided management determines that the implementation of these rights would not result in what it considers to be unacceptable increases in funding and/or unacceptable increases in the movement of employees from one duty station to another. The extent of assignment rights management will consider is as follows:

An FS career employee released from his/her competitive level is eligible for assignment to another competitive level provided that the competitive level has the same personal class as that of the released employee and the occupational category code is the same as the employee's primary skill code, and that a continuing position is occupied by an employee with a lower retention standing than the released employee;

(3) Temporary Promotions

An employee whose personal class is based upon a temporary promotion is treated in his/her temporary class the same as a limited employee. If such an employee selected for separation is an unlimited employee, the temporary promotion is terminated and the employee returns to his/her permanent personal class.

C8b

(4) Retraining Program

What the Agency determines to be reasonable amounts of training will be made available at Government expense for employees who are displaced when such training would make a direct contribution to the employee's placement.

9. Initiating RIF Action

a. Determining Need for RIF

PFM/PM/FSP determines that a RIF is necessary when there are no employees serving in limited appointments in a surplus occupational category, when position restructuring, employee reassignment or retraining is not feasible to eliminate the surplus. Therefore, an employee with an unlimited appointment under Sec. 625(d)(2) of the Foreign Assistance Act, as amended, must be separated by a RIF.

b. New Appointment Freeze

Prior to or at the time of issuance of a RIF notice to any unlimited employee, PFM/PM/FSP suspends any new appointments in the affected occupational category and class, and advises management that appointments of additional personnel for duty at any location in the world in the affected category are to be held in abeyance. Such freeze is maintained until all unlimited employees in the same competitive level who are retained on Agency rolls are satisfactorily placed. Exceptions to the appointment freeze may be granted by the Director, PM, under circumstances considered to be exceptional and appropriate.

c. Skill Code Freeze

Assigned skills codes will be frozen when it is determined that a RIF is necessary. From the time of the freeze until the completion of the reduction, a skills code may be changed only if the Chief, PFM/FM/FSP, determines that the assigned code is in error and does not reflect the employee's record of experience, education and training.

d. Establishment of a Retention Register

(1) Preparation

When a RIF is necessary, PFM/PM/FSP prepares the retention register.

C9d

(2) Order of Register

In compiling a retention for a given competitive level, employees entitled to veteran's preference who have compensable service-connected disabilities of 30% or more are in Group AD; other veteran preference eligibles are in Group A; and other employees are in Group B.

(3) Ranking of Employees

(a) Within each group employees are ranked in descending order of service dates. All competing employees in a given competitive level, whether in work or leave status, are shown on the register.

(b) The total length of creditable Government service is the basis for the relative retention standing on the RIF register. The total number of years, months and days is used to determine retention standing.

(c) The retention standing of each employee is determined as of the date of the expiration of the original notice period.

e. Order of Separation

Employees compete for retention within the same competitive level only. The order of separation in any competitive level begins at the bottom of the list with the lowest ranking employee in the lower group. However, the Agency may retain an employee reached for release from his/her competitive level when employees with higher standing are unable to take over his/her duties within 90 days and without undue interruption to an A.I.D. program activity. The Deputy Administrator is authorized to make such a determination, based only on a clearly established and compelling factual showing that the circumstances warrant its use. Bureaus and offices requesting a selection out of order will submit the supporting documentation through PFM to the Deputy Administrator. When the Agency uses this authority, it must report in writing the exception and the reasons for it to each higher-standing employee reached for release. Any higher-standing employee who believes he/she can take over the duties within 90 days and without undue interruption to the A.I.D. program activity in question may appeal to the U.S. Office of Personnel Management for review of the Agency's reasons for the exception. When the Agency reaches an employee for release from his/her competitive level, it may retain him/her up to 90 days after higher-standing employees are released from the level when none of the higher-standing employees released can take over his/her duties without undue interruption to an A.I.D. program activity.

C9

f. Separation of Employees

(1) Separation is ordered after approval of the RIF retention register by PFM/PM/FSP. Within their competitive levels, employees are separated in the order of ranking on the register, beginning with the one with lowest standing and continuing up the register separating each next ranking employee until the required number of separations has been effected. If more than one employee has the same retention standing, the employee with the lowest relative ranking on the last evaluation panel rank order register is separated first.

(2) PFM/PM/FSP may fix the date on which the notice period begins and the means by which the notice shall be delivered. If separating two or more employees in the same competitive level, PFM/PM/FSP is required to fix a future date on which the notice period begins and by which the notice shall be delivered. Exception to such uniformity may be authorized for employees who have departed from their posts, are still in transit when delivery ought to be made, and have not arrived in the United States.

(3) PFM/PM/FSP is responsible for issuance of notice, preparation of form AID 4-520 and all other required action as follows:

(a) prepares and issues RIF notice to the specifically named employee(s);

(b) Advises Mission whether employee has reemployment rights in AID/W or another Federal agency. If the employee has reemployment rights, PFM/PM/FSP notifies the appropriate agency or organization of the proposed separation and the employee's reemployment rights 60 calendar days in advance. If reemployment rights are in AID/W it notifies PFM/PM/CSP.

(c) Advises the Mission of the amount, if any, of TDY in Washington in excess of the normal 15 days which shall be ordered or may be authorized.

10. RIF Notice

a. Preparation of RIF Notice

(1) The RIF notice will be prepared and issued by PFM/PM/FSP.

(2) Notice period begins the calendar day following the date the employee receives the notice.

C10

(a) Employees at Overseas Posts

Employees overseas will be provided at least 45 calendar days notice prior to the effective date of separation; 60 calendar days notice period will be granted to employees having reemployment rights in AID/W or another Federal agency. This includes 15 calendar days TDY in AID/W except when more or less is authorized by PMF/PM/FSP. Employees may request in writing a waiver of TDY if they desire to separate at post or wish to have the period of TDY increased or decreased. The same amount of active duty is normally granted for all persons subject to the same RIF action. If for any reason an employee's services cannot be effectively used at post during the notice period, he/she may be authorized to serve all active duty in AID/W. In these circumstances the active-duty period should be reduced from 45 to 30 days (60 calendar days for employees with reemployment rights).

Employees will be authorized travel time to return to separation residence via Washington, DC. Employees separating at post will be authorized direct travel from post to separation residence.

(b) FS Employees Assigned to AID/W

At least 30 calendar days will be authorized for employees not having reemployment rights in AID/W or another Federal agency, and at least 60 calendar days for those having such reemployment rights.

Employees will be authorized travel time to return to separation residence.

b. In either paragraph (a) or (b) above, upon an employee's written request, the Director, PM, or designee, may allow the substitution of available annual leave, allowable transit time, leave without pay, or approved sick leave for any or all of the active duty period, if applicable. When necessary, the employee may be required to substitute travel time for part of the active duty period. Notwithstanding the foregoing in an emergency when there is a lack of funds, the Director, PM, or designee, may issue appropriate instructions as to the amount of the active duty period for which leave without pay is to be substituted. This does not require the employee's consent.

C10b

c. Disposition of Copies of RIF Notice

(1) RIF notices are distributed as follows:

--Employee: original and one copy.
--PFM/PM/PFP: one copy.
--Mission or office to which assigned: one copy.

(2) Two copies of form AID 4-243, Request for Leave Without Pay in Connection with Reduction in Force, are enclosed with each RIF notice to the employee. This form may assist employees in determining whether they wish to request a period of LWOP not to exceed 180 days (including notice period already authorized) which will postpone the separation day. One copy must be completed by the employee and returned to PFM/PM/FSP within 5 calendar days after receipt of the RIF notice. No LWOP will be granted unless a specific signed request is received from the employee or upon instructions of the Director, PM, in an emergency (see 2C10b). To protect the employee's retention on A.I.D. rolls, the name, address and phone number where he/she may be reached on short notice during the notice period when away from his/her official duty station must be provided to PFM/PM/FSP.

11. Extension

a. Extension of Active Duty

(1) PFM/PM/FSP is authorized to extend the active-duty period prior to the separation date when the extension is for the convenience of the Government.

(2) Mission requests for extension of active-duty period are made to PFM/PM/FSP with full justification and explanation of need for the extension.

b. Postponement of Effective Date of Separation

(1) The Agency will give full consideration on a case-by-case basis to requests from employees who have received RIF notices for LWOP up to a maximum notice period of 180 days of combined duty and leave

C11b(1)

status, following issuance of the notice. In addition, the Agency agrees that in appropriate cases involving protection of employee rights or to avoid hardship to the Agency or to the employee, the Agency will request the approval of the U.S. Office of Personnel Management to extend the maximum notice period. An amended notice includes the total number of days specified in the original notice, plus the number of days of LWOP approved, not exceeding 180 calendar days after the delivery of the original notice. If the employee does not accept an offer of another A.I.D. assignment, such LWOP may be canceled at the end of any allowable travel time.

(2) If LWOP is granted, travel time is permitted at any time during the initial notice period or the LWOP extension, subject to the cancellation provisions above, but it is not permitted beyond 180 calendar days from the receipt of initial notice. (NOTE: To be entitled to travel and allowable transportation of effects at Government expense, the actual departure of the employee and dependents (if any) must be initiated within 12 months if assigned overseas, and 6 months if in AID/W from the last day in pay status. Travel time, salary or TDY in AID/W may not be authorized after the employee is off the rolls.)

(3) If LWOP is requested to permit travel or temporary residence outside the United States of more than 45 calendar days' duration, the employee and his/her dependents shall, where adequate facilities are available, as a precondition of receiving such leave, take the prescribed medical examinations in or near his/her country of assignment or submit written waiver of rights to medical claim. Exception to the requirement of examination overseas may be made by PFM/PM/FSP in extenuating circumstances.

12. Withdrawal of RIF Notice

a. RIF notices may be withdrawn at any time prior to separation.

b. Employee's notification of the withdrawal of a RIF notice must be made in writing. This notification indicates the effective date of withdrawal, the reasons and the employee's current status resulting from the withdrawal.

c. In withdrawing a RIF notice, the order of separation prescribed in 2C9e must be observed.

C

13. Availability of Retention Registers

The retention register listing an employee affected by a RIF is forwarded to the Mission and is immediately open to the employee's inspection. Registers are also open to inspection by affected employees during their authorized period of active duty in AID/W, and they will be so advised in their RIF notice. Every effort will be made to supply applicable RIF registers to the organization certified to represent the Foreign Service concurrently with RIF notices to employees. If an employee requests, in order to enable him/her to consider an appeal to the Deputy Administrator, the U.S. Office of Personnel Management or, if applicable, the Foreign Service Grievance Board, he/she shall be entitled to see any retention register which he/she believes may be associated with his/her separation.

14. Lifting Hold Orders on New Appointments

PFM/PM/FSP is responsible for notifying all interested offices promptly after the order to hold new appointments is lifted.

15. Appeals

Any employee who has received a RIF notice has the right to appeal the RIF notice to the Deputy Administrator, in accordance with 2C15a. Any career employee, whether or not an appeal is taken within A.I.D., may appeal the separation action to the Federal Employee Appeals Authority of the U.S. Office of Personnel Manpower, or, if applicable, utilize the Foreign Service grievance procedure.

a. Appeal within A.I.D.

(1) An employee notified of proposed separation has 10 calendar days from the date of receipt of the RIF notice to appeal in writing to the Deputy Administrator through the appropriate Mission or Bureau/Office. The appeal must contain specific and pertinent reasons for believing the proposed action should not be effected and such additional facts as he/she may have to support his/her appeal. The Mission immediately notifies AID/W, via cable, upon receipt of an employee appeal.

(2) The Mission or Bureau/Office fowards the appeal within 3 workdays after receipt along with comments and any other pertinent information to the Deputy Administrator through PFM/PM/FSP.

C15a

(3) The Deputy Administrator acts on the appeal and notifies the employee and the Mission of a decision within 5 workdays after receipt of the appeal. If the appeal is denied, the employee and the Mission are informed that the original notice remains in effect.

(4) The appeal process and the failure to receive notice of decisions are not a basis for extending the active-duty period of an employee. Notice periods continue to run until completed or until the RIF notice is withdrawn. However, no RIF separation is affected while an appeal is being adjudicated within A.I.D.

(5) For employees assigned to AID/W or on complement, PFM/PM/FSP receives and forwards appeals and decisions.

b. Appeal to the U.S. Office of Personnel Management

An employee may, whether or not he/she has appealed within A.I.D., appeal to the Federal Employee Appeals Authority. However, if he/she chooses to appeal to the Agency, he/she may not appeal to the FEAA until after receipt of Agency decision on the appeal.

(1) The appeal should conform to the same requirements of content as his/her A.I.D. appeals, and, in addition, should refer to the previous appeal filed within A.I.D. If an appeal fails to state the reasons the employee believes the proposed action to be in error, the U.S. Office of Personnel Management (OPM) acknowledges the appeal and gives the appellant an opportunity to show why he/she should be given further consideration. If no reasons are presented within a reasonable time, the appeal may be rejected.

(2) The appeal to the FEAA should be addressed to the Federal Employee Appeals Authority, U.S. Office of Personnel Management, Washington, DC 20415

(3) An employee may file his/her appeal to the FEAA via airmail directly to OPM.

(4) An appeal to the FEAA may be filed at any time after receipt of final AID/W decision, but not later than 15 calendar days after the effective date of separation. The FEAA does not consider the appeal until the employee has actually been separated.

C15b

(5) An appeal to the FEAA does not interrupt the running of the notice period nor delay the effective date of separation.

16. Exercising Reemployment Rights

a. An employee who is being separated and who has reemployment rights in AID/W or another Federal agency must avail himself/herself of such rights within 30 calendar days after separation or he/she is deemed to have waived such rights. Similarly, if the employee accepts a position elsewhere than in the Government agency in which the reemployment rights may be exercised, he/she is deemed to have waived his/her reemployment rights. To facilitate reemployment, the employee being separated should, as soon as possible after receipt of the RIF notice, notify the parent agency of his/her intent to exercise reemployment rights.

b. Agency outplacement assistance is provided by PFM/PM/FSP. The employee also may be eligible for assistance under the Displaced Employee Program, U.S. Office of Personnel Management.

2.1D Deleted (see Ch. 3, Supp. B)

2.1E Termination of Time-Limited Appointment - Foreign Service

1. General

a. An employee serving in a FS appointment that carries a specific time limitation serves at the discretion of the Agency and may be separated at any time except for reasons of misconduct.

b. This section sets forth the procedures to be followed when the Agency terminates an employee's time-limited appointment.

2. Legal Basis

Sec. 638 of the Foreign Service Act of 1946, as amended, authorizes the separation at any time of a FSR or FSS employee serving under a limited appointment, except in cases of termination for misconduct. Terminations because of misconduct must be made under the provisions of Section 637 of the Foreign Assistance Act.

E

3. Applicability

a. This section applies to all FSR amd FSS employees holding time-limited appointments.

b. Time-limited employees are not separated under RIF regulations but under the regulations in this section. Time-limited employees may be separated for disability, but, except for the actual separation procedures, 2G is applicable.

4. Policy

It is Agency policy:

a. to retain a time-limited employee for as long as his/her services can, in the opinion of the employing office, be advantageously used in the A.I.D. program. A time-limited appointment may be extended, renewed or converted to an unlimited appointment. Conversely, the Agency reserves the option to allow each appointment to expire or to effect separation prior to expiration date.

b. to give an employee reasonable advance notice regarding any change in his/her status prior to the effective date of such change. Thus, an employee is informed as soon as the Agency knows whether his/her current appointment will be renewed, extended or terminated.

c. to inform a candidate who receives a time-limited appointment that the "not-to-exceed" (NTE) date shown on the appointment document does not preclude the possibility of an earlier termination date, at the discretion of the Agency.

5. Procedures and Responsibilities

a. Notice to Employee

(1) Authorization and Signature

The Director, PM, or designee, authorizes and signs a notice of separation to the employee. The authorizing official may authorize the Mission Director or A.I.D. Representative to sign such notice. If at any time prior to the date of separation a new assignment is arranged for the employee, the decision and notice to separate may be rescinded.

E5a

(2) Time of Delivery and Effective Date

The notice, specifying the date by which separation shall be effective, is forwarded to the employee, either by or through the Mission Director of A.I.D. Representative, with a copy retained by the Mission. In the case of a limited employee in the United States, such notice may be delivered directly without transmission through the Mission. Delivery date is to be as far in advance of the proposed termination date as possible, and planned to allow ample time for direct travel to employee's place of residence, medical clearance and up to 15 days' consultation in AID/W. In no case does the employee receive the letter later than 30 calendar days (60 days if he/she has reemployment rights in another Federal agency) before the effective date of his/her separation.

(3) Content of Notice

The notice informs the employee that the appointment is being allowed to expire in accordance with the NTE date shown on the appointing document, form AID 4-520, or being terminated prior to the NTE date shown. If the employee has reemployment rights in AID/W or another Federal agency, the notice informs the employee that should he/she desire to exercise such rights, he/she must apply to his/her parent agency no later than 30 calendar days after the effective date of personnel action terminating his appointment.

b. Postponement of Effective Date

The specified date on which separation is to be effected may be postponed by extending the appointment, if necessary, only in the event of a delay in receipt of medical clearance, or in exceptional circumstances, when approved by the Director, PM, or designee.

c. No Appeal Provided

If a time-limited employee is separated for misconduct, he/she may appeal. There is no right of appeal for employee separated because of termination of time-limited appointment.

2.1F Separation During Probationary Period - A.I.D. Employees in the Competitive Service -- Deleted

2.1G Separation for Disability - Foreign Service

1. General

a. This section sets forth policy and procedures governing the separation of an FS employee medically disqualified for continued service because of physical or mental disability, or for whom no assignment can be found because of a limited medical clearance.

b. "Employing Office" refers to the office having responsibility for initiating personnel actions involving the employee in question.

2. Legal Basis

Sec. 943 of the Foreign Service Act of 1946, as amended, authorizes medical examinations of FS employees. Authority to separate employees medically disabled for continued service is inherent in the Agency's authority to prescribe qualifications and standards for employment in the Foreign Service.

3. Applicability

This section applies to all U.S. citizen employees in the A.I.D. Foreign Service.

4. Policy

It is Agency policy:

a. to identify any employee to meet medical standards for continued service;

b. to explore courses of alternative action, i.e., reassignment, assignment to regional complement, use of leave or disability retirement before reaching a decision to separate the employee from the rolls for disability;

c. to defer the effective date of separation pending the U.S. Office of Personnel Management or the Foreign Service Retirement and Disability System adjudication of an application for disability retirement, if one was filed, and pending separation medical clearance by the Medical Division, Department of State.

5. Action Following Receipt of Medical Report

Following receipt of a report by the Medical Division, Department of State, that an FS employee is medically disqualified for service at an overseas post or is given medical clearance for only limited overseas duty (either of which may be permanent or temporary), the employing office considers the following courses of action, as appropriate, based on the medical report, before a decision is reached that separation for disability is necessary:

a. Temporary or Permanent Reassignment to any other position in the A.I.D. Foreign Service or in AID/W, if feasible, giving due regard to employee's physical condition and the requirements of the position. The possibility that the employee would be willing to accept reassignment to a lower grade position with less strenuous demands should not be overlooked.

b. Assignment to Complement if there is reasonable expectation that the employee can be medically qualified for overseas service within one year following such assignment.

c. Leave for Purpose of Recovery if the disabling condition is not permanent in nature. Such leave may include all sick leave to the employee's credit and, as appropriate, annual leave, and LWOP.

d. Retraining employee for a position for which he/she has the basic qualifications and capabilities, if there is no reassignment available for which he/she is fully qualified.

6. Application for Disability Retirement or Payments

a. If none of the above actions is practicable, the employing office, working closely with the PFM/PM/FSP, notifies the employee of whatever benefits may be available to him/her as a disabled employee.

b. An employee eligible to apply for disability retirement is advised how and where to file application for such benefits.

An employee with the required service to apply for disability retirement will be infored that:

(1) the employing office will assist him/her in the filing of his/her application;

(2) he/she will be retained on A.I.D. rolls, in leave status if necessary, until the Civil Service Commission or the Director General of the Foreign Service, Department of State, has adjudicated the application for retirement;

G6b

(3) if he/she does not have sufficient annual or sick leave, as appropriate, to cover the time his/her case is pending, he/she may request LWOP.

c. If the employee has the required service to apply for disability retirement but declines to do so, the Agency shall, in exceptional circumstances, such as when the disabling condition is mental, file disability retirement application on behalf of the employee.

d. If the application for disability retirement is denied, the employee or the Agency, as appropriate, may appeal such decision to the U.S. Office of Personnel Management, or to the Deputy Under Secretary for Management, Department of State, as appropriate.

7. Use of Separation Procedures

a. Separation action based on disability is initiated when:

(1) the employee lacks the service required for disability retirement;

(2) no application is made for disability retirement;

(3) application for disability retirement is denied;

(4) there is no other alternative to "Separation-Disability" action.

b. Employees separated for disability are entitled to certain job protection benefits. For procedrual instructions, see Ch. 5A (notices will differ in wording since there is no implication of disciplinary action in a disability separation).

c. The following instructions apply only in disability separations and represent modifications to the generally applicable instructions in Ch. 5A.

(1) Preparation of Notice to Employee

Advance notices of intent to separate are prepared by PFM/PM/FSP and signed by the Chief, PFM/PM/FSP. If the case is referred to the Agency Board of Review and Appeal, the notice of final decision is prepared for signature of the Administrator.

G7c

(2) Basis for the Proposed Action

If the Medical Divison, Department of State, has found that the employee does not meet the medical requirements for continued overseas service, this finding is used as the basis. The notice informs the employee that he/she is entited to a meeting with the Chief, PFM/FM/FSP, to discuss the medical report. If the Agency believes an employee to be disabled, but there has been no medical disqualification because the employee refuses or fails to submit to an examination, the proposed separation may be insubordination, i.e., refusal to submit to an examination; deficiencies observed in his performance, i.e., failure or inability to perform required duties; examples of how his/her condition constitutes a hazard to himself or to others; or for other reasons which evidence unsuitability for continued service overseas.

(3) Extension of Notice Period

In no case will the employee's separation take effect if his/her case is pending a decision on disability retirement benefits or is pending authorization by the Medical Divison, Department of State. In such case, the notice period is extended until such time as a decision is rendered. Extension for this purpose may be on an annual leave, sick leave, or LWOP, as appropriate.

Att. 2.1-1A

FOR EMPLOYEES AT POST

STANDARD REDUCTION-IN-FORCE NOTICE

Official Title:_____
Tenure Group:_____
Competitive Level (Code:_____
(Class:_____
Service Date:_____
Date of Notice:_____

Name

Address

Dear_____:

I regret that it will be necessary for A.I.D. to terminate your services at the conclusion of your notice period, approximately_____ calendar days from the receipt of this letter, because (specify -- e.g., because it has been necessary to abolish certain positions). Under the reduction-in-force procedures, you have been reached for separation (HB 30, Ch. 2.)

This notice period consists of _____ calendar days of active duty, and allowable time for travel to your home via Washington, D.C.

The exact date on which the notice period ends may not be known until travel to Washington is completed, but the following information may help you make travel plans: The active duty period will include _____ calendar days in Washington. Allowable travel time is estimated at _____ calendar days. Annual leave or LWOP may, at your request, be granted in substitution for equivalent active duty.

You may find it advantageous to request a period of leave without pay which will postpone the effective date of separation to a date as late as 120 calendar days after the date of this notice. The reasons such action may be desirable are explained in the attached form AID 4-243, Request for Leave Without Pay in Connection with Reduction in Force. If you want such leave, you are required to complete one copy of this form and return it to this office within 5 calendar days from the receipt of this letter. The duplicate copy is for your files.

You are urged to take the separation medical examination as quickly as possible in order that medical care and treatment may be given while you are still on the rolls.

RIF Notice

A.I.D. regulations limit you to 6 months from the last day in pay status in which to initiate return travel to the United States in order to have A.I.D. pay for the cost of travel of yourself and dependents, if any, plus transportation of authorized effects, unless an earlier or a later time limitation is specified in the travel authorization. However, travel time, salary, and TDY in AID/W cannot be authorized after your separation has been effected.

This action may be appealed through this office, if the appeal is submitted in writing within 5 workdays after date of receipt of this letter. Possible further appeals are explained in A.I.D. regulations governing reduction in force; these regulations are available for inspection at (specify where).

The retention register for your competitive level is available for review at (specify).

(For employees having reemployment rights, include the following paragraph:

> The Agency's records indicate that you have (or may have) reemployment rights in _____ (agency) _____. If you wish to exercise these rights, you must notify that agency of your intent to do so no later than 30 calendar days after separation from A.I.D.)

When you arrive in Washington, you will report to _____ 1/ _____ to arrange for an interview to discuss such matters as retirement eligibility, conversion or termination of Employees Group Life Insurance and Employees Health Benefits Insurance, application for unemployment compensation, eligibility for severance pay, etc. If desired, personnel specialists are available to assist you in locating employment elsewhere.

I appreciate the service you have given this Agency and assure you that the termination of your services in no way reflects upon the value of your work.

Sincerely yours,
(Signature and Title)

1/ Insert here the exact location of the office in AID/W responsible for the reception of overseas employees.

NOTE: In the case of any selection for separation which is made out of the regular order (See para 2C7d(1), HB 30, Chapter 2.), a statement shall be added to the RIF notice indicating that this has been done, together with a statement of the reasons for such action.

Att. 2.1-1B

ILLUSTRATION OF A TENTATIVE RETENTION REGISTER

Competitive Level - Extension Adviser (Area) -- R-5
Occupational Code: #0406.01 (HB 33)

Date register is established

Tenure Groups	Personal Rank	Service Date	Action
GROUP I - Entitled to Veterans' Preference			
Sam Griffin	R-5	3-1-42	
John Charles	R-5	7-15-42	
GROUP II - Not Entitled to Veterans' Preference			
James Banks	R-5	10-9-29	
Harry Marstal	R-5	12-18-45	

Noncompeting Employees

All Resident and FSR-L employees.

(List name, personal rank, service date, action)

AGENCY FOR INTERNATIONAL DEVELOPMENT

REQUEST FOR LEAVE WITHOUT PAY IN CONNECTION WITH REDUCTION IN FORCE

If you would like to resume active foreign service within the near future, should the opportunity arise, it may be advantageous for you to request a period of leave without pay before separation. For this reason, HB 30, Ch 2 AID regulations ~~(M.O. 476.2, Sec. IX.)~~ provide that an employee may be granted an extension of the separation date by requesting a period of leave without pay, provided that the separation notice period and the LWOP do not exceed a total of 120 calendar days. (LWOP may not be used until all annual leave allowed in the separation notice period has been exhausted).

In deciding whether you wish to request leave without pay, you should consider the following factors:

MEDICAL CLEARANCE – You are required to take a medical examination prior to separation from the service. The purpose of the examination is to identify, before you are off the rolls, any illness or injury resulting from your service overseas which may require treatment. The examination also serves to protect the Government against unwarranted medical claims under the Employees Compensation Act. Dependents must also receive medical examination or submit written waiver of medical claim. However, the employee will be deemed to have automatically waived any future claim for medical examination or treatment under the Foreign Service Act for himself or for any of his dependents who accompanied him to post if such person(s) fail to complete the prescribed medical examination(s) prior to the effective date of separation. The effective date of separation will not be delayed for failure to complete medical examinations ~~(M.O. 454.1, Section VII.D.1.).~~ (HB 29)

If leave is requested to permit travel or temporary residence outside the United States, you and your dependents shall, where adequate medical facilities are available, as a precondition of receiving such leave, take medical examinations in or near your country of assignment or submit written waivers of rights to medical claim.

If your examinations are authorized as part of the active duty period in AID/W, it is highly desirable that you schedule a short period of leave following it, since it is not always possible for the State Department Medical Division to complete the medical clearance without delay. This leave may be either annual leave for which you cannot be paid a lump sum (leave above ceiling) or leave without pay. It is not possible to place an employee on sick leave while he is in LWOP status; accordingly, if you have reason to believe that hospitalization will be required, you should plan to use your allowable annual leave (leave above ceiling) after active duty in AID/W rather than earlier during the notice period. In any case, to insure the maximum protection, at least two weeks of one or the other type of leave should be scheduled.

TRAVEL – The reduction-in-force notice period allows only for travel time computed on the basis of the time required to return to home, via Washington, D. C., by the usually traveled route and the mode of transportation prescribed for separation travel ~~(Sec. 131.1-2, M.O. 560.2).~~ HB 22 If you are planning travel home by other than the usually traveled route which would delay return beyond the notice period, you should request sufficient LWOP to cover such needs. However, it should be remembered that travel time in a salary status will not be allowed if such travel occurs after 120 calendar days from the receipt of the RIF notice.

DELAYED DEPARTURE – If you need an extension of the separation date to take care of a personal situation requiring delayed departure from the post (such as desire to permit children to finish school term, etc.), you should request approval of LWOP. However, regardless of whether you have requested an extension of the separation date in LWOP status, you are limited to six months from the last day in pay status in which to initiate travel to return to the USA in order to have the Government pay for the cost of travel of yourself and dependents, if any, plus transportation of authorized effects (travel time salary and temporary duty in AID/W cannot be authorized beyond 120 days).

ELIGIBILITY FOR UNEMPLOYMENT COMPENSATION – As a terminated Federal employee, you may be eligible, after return to the United States, to apply for unemployment compensation benefits. Additional information and the appropriate application forms will be furnished you during your TDY in AID/W. Once in the United States you may file for such benefits at any time after the notice period, whether or not you are on LWOP. A claim is processed beginning the date you file it.

SEVERANCE PAY – As a terminated Federal employee, you may be eligible for severance pay ~~(M.O. 432.2).~~ (HB 26)

If you wish to take LWOP, you must submit a specific written request for it. If you receive approval for a period of LWOP and when offered, do not accept another A.I.D. assignment, such LWOP may be cancelled so the Agency may meet its staffing requirements by hiring new personnel. To protect your retention on A.I.D. rolls, it is essential that the Agency be able to reach you quickly during the period prior to your separation. Be sure to give an address, telephone number, and person to call where you can be reached during the notice period prior to separation.

The notice period, including the extension of the effective date of separation by LWOP, is limited to a total of 120 calendar days. The effective date of involuntary separation is specified in the notice letter as a given number of days from the receipt of the letter. The maximum amount of time which may be available to you for LWOP purposes can be computed by subtracting the number given in the letter from 120 days.

All employees being reduced in force are required to complete the information on the reverse and return it to the Sending Officer within five calendar days from the receipt of the notice letter.

EMPLOYEE'S REQUEST FOR LEAVE WITHOUT PAY

☐ I request that the date of my involuntary separation be extended_____calendar days. Please place me on leave without pay during this period for the following reason:

☐ No LWOP desired.

Point(s) of contact during absence from official duty station:

Inclusive Dates	Name(s)	Address(s)	Telephone No.

Name (print or type) _____ Title _____ Date _____

Signature of employee _____

Att. 2.1-1D

SEPARATION LETTER EXTENDING SEPARATION DATE

Dear _____:

This letter amends the original RIF letter issued you ___(date)___, to entend the termination of your services from _____ days to _____ days from the receipt of the initial letter. This extension of the effective date of separation is granted in compliance with your request dated _____, for a period of LWOP. During the notice period, if you do not accept another assignment in A.I.D., the LWOP may be canceled.

Sincerely yours,

Att. 2.1-1E

SAMPLE REDUCTION-IN-FORCE NOTICE

FOR EMPLOYEES WHO HAVE DEPARTED POST

WHEN AGENCY DETERMINES ACTIVE DUTY IN AID/W IS REQUIRED

Official Title:_____
Tenure Group:_____
Competitive Level (Code:_____
(Class:_____
Service Date:_____
Date of Notice:_____

Name

Address

Dear_____:

I regret that it is necessary for A.I.D. to terminate your services at the conclusion of your notice period, approximately _____ calendar days from the receipt of this letter, because (specify -- e.g., because it has been necessary to abolish certain positions). Under the reduction-in-force procedures, you have been reached for separation (HB 30, Ch. 2.)

This notice period consists of _____ calendar days of active duty in AID/W, and allowable time for travel from (present location) to Washington, D.C., and from Washington, D.C., to your approved separation address.

The exact date on which the notice period ends may not be known until travel to Washington is completed, but the following information may help you make travel plans: Travel time is estimated at _____ calendar days. Annual leave or LWOP may, at your request, be granted in substitution for equivalent active duty.

You should commence travel to Washington as soon as possible but no later than _____. If you are now on home leave, it ceases as of the date you receive this notice, and you will be continued on annual leave or leave without pay (LWOP), in accordance with the Overseas Return Certificate which you signed on _____. You will remain in a leave status (annual leave or LWOP, depending upon your current status) until you commence travel in accordance with the provisions of this letter. You will be placed in work-pay status when you commence direct travel to AID/W.

Please sign and return immediately one copy of this notice, indicating thereon date of receipt of this notice and date you will report to AID/W. You may elect to waive all or part of the active duty by submitting in writing to this office a request for earlier separation. If you waive the entire period, you will not be required to travel to Washington, D.C.

You are entitled to travel from your present location to Washington, D.C., and from there to your authorized separation point. Travel of any dependents still at post and transportation of household and personal effects at Government expense will be authorized. Your travel to separation point, travel of dependents and the movement of effects, including motor vehicle, must begin within 6 months from the last day in pay status.

Enclosed is a Travel Request covering your travel to Washington, D.C.; it is to be returned to this office is you waive the entire period of active duty in AID/W. (Optional: If Travel Request is not furnished with this letter, add the following sentence: You may claim reimbusement after this authorized travel has been performed by submission of travel voucher.)

Payment of salary during travel time is allowed only for travel by the usually traveled route and the approved mode of transportation between authorized point of origin to Washington, D.C., and from there to point of separation, and only when such travel is prior to the date on which you are separated from the rolls of A.I.D. Storage of effects at Government expense ceases 3 months from your last day in pay status.

You may find it advantageous to request a period of leave without pay which will postpone the effective date of separation to a date as late as 120 calendar days after the date of this notice. The reasons such action may be desirable are explained in the attached form AID 4-243, Request for Leave Without Pay in Connection with Reduction in Force. If you want such leave, you are required to complete one copy of this form and return it to this office within five calendar days from the receipt of this letter. The duplicate copy is for your files.

This action may be appealed to the _____1/_____ if the appeal is submitted in writing within 5 workdays from date of receipt of this letter. Possible further appeals are explained in A.I.D. regulations governing reduction in force. Those regulations and the retention register for your inspection (specify where).

(If employee has reemployment rights, include the following paragraph:

> Agency records indicate that you have (or may have) reemployment rights in _____(agency)_____. If you wish to exercise these rights, you must notify that agency of your intent to do so no later than 30 days after separation from A.I.D.)

When you arrive in Washington, you will report to _____2/_____ to arrange for an interview to discuss such matters as retirement eligibility, conversion or termination of Employees Group Life Insurance and Employees Health Benefits Insurance, and application for unemployment compensation, eligibility for severance pay, etc.

I appreciate the service you have given this Agency and assure you that the termination of your services in no way reflects upon the value of your work.

Sincerely yours,

(Signature and Title)

1/ Indicate head of the office which issues the notice.

2/ Indicate here the exact location of the office in AID/W responsible for the reception and debriefing of overseas employees.

NOTE: In the case of any selection for separation which is made out of the regular order (see HB 30, 2C7d(1)), a statement shall be added to the RIF notice indicating that this has been done, together with a statement of the reasons for such action.

Att. 2.1-1F

SAMPLE LETTER TERMINATING EMPLOYEE'S

APPOINTMENT ON THE EXPIRATION DATE

Dear _____:

As you know, you are now serving under a time-limited appointment which expires on (date). This letter is to notify you that your appointment as (title, class, salary) will be terminated no later than the date shown on your appointment notification (AID 4-520). Accordingly, this letter will constitute formal notice of your separation upon the expiration of your present appointment pursuant to HB 30, Ch. 2, "Termination of Limited Appointment - Foreign Service."

Your separation will take effect as closely as possible to the date shown in the first paragraph above. However, in no case will you be separated earlier than 30 ("60" if employee has reemployment rights in another Federal agency) calendar days after receipt of this letter, unless you request separation at an earlier date in writing. You should plan your departure from post by computing the time required for travel to your U.S. residence via Washington, D.C., up to fifteen workdays temporary duty in AID/Washington, and then subtracting the total number of days computed from the approximate effective date shown above.

It is important that you and those dependents who traveled to your post complete the prescribed medical examinations before the effective date of your separation from the A.I.D. foreign service. If the prescribed medical examinations are not completed before the effective date of your separation, you will be deemed to have waived any future claim for medical examination, treatment, or care under the Foreign Service Act of 1946, as amended. The effective date of separation will not be delayed for failure to complete the prescribed medical examinations.

(Add if applicable) Our records indicate that you were granted reemployment rights in (name of agency). Should you desire to exercise these rights, you should apply to that agency no later than 30 calendar days from the effective date of your separation from A.I.D.

The attached sheet contains information which you should find useful in making your plans. In behalf of the Agency, let me express to you our gratitude and appreciation for the service you have rendered in this important program.

Att. 2.1-1G

SAMPLE LETTER

TERMINATING EMPLOYER'S TIME-LIMITED APPOINTMENT

PRIOR TO THE EXPIRATION (NTE) DATE

Dear _____:

As you know, you are now serving under an appointment which may not exceed (date). Accordingly, this letter will constitute formal notice that your appointment as (title, class, and salary) is being terminated earlier than planned, and your separation will be made under the provisions in HB 30, Ch. 2E. (Reason may be inserted.)

Your separation will take effect as soon as possible after (1) your last day on active duty at the post, (date), which will be at least 30 calendar days after you receive this letter ("60" if the employee has reemployment rights), (2) the completion of allowable travel time to; your residence in the United States via AID/Washington for temporary duty not in excess of fifteen workdays. Earlier separation may be effected upon your written request.

It is important that you and those dependents who traveled to your post complete the prescribed medical examinations before the effective date of your separation from the A.I.D. foreign service. If the prescribed medical examinations are not completed before the effective date of your separation, you will be deemed to have waived any future claim for medical examination, treatment, or care under the Foreign Service Act of 1946, as amended. The effective date of separation will not be delayed for failure to complete the prescribed medical examinations.

(Add if applicable) Our records indicate that you were granted reemployment rights in (name of agency). Should you desire to exercise these rights, you should apply to that agency no later than 30 calendar days from the effective date of your separation from A.I.D.

The attached sheet contains information which you should find useful in making your plans. In behalf of the Agency, let me express to you our gratitude and appreciation for the service you have rendered in this important program.

Att. 2.1-1H

INFORMATION FOR SEPARATED EMPLOYEES

TO BE FURNISHED AS ATTACHMENT TO SEPARATION NOTICE

You are entitled to return travel for yourself and your dependents from post to your United States residence provided such travel is initiated within six months from your last day in pay status. Allowable travel time (that is, travel in pay status and per diem) will be granted for the travel period computed on the basis of the time required to return you to your home via Washington, D.C., by the usually traveled route as defined in the A.I.D. Foreign Service Travel Regulations (HB 22, App 9A), provided such travel time is prior to the actual date of your separation.

Transportation of your household and personal effects at Government expense must begin within six months after your last day in pay status unless earlier or later limitation is specified in the travel authorization or the time limitation is extended.

After your last day of active duty at post, you will be in a pay status during (1) the period of allowable travel time, (2) the approved period of temporary duty (consultation) in AID/Washington, and (3) the period during which you are on approved annual leave.

When you arrive in Washington, you should report to _____

_____

Arrangements will then be made for an interview with you to discuss such matters as Retirement eligibility, Employee Group Life Insurance, application for unemployment compensation, etc.

Att. 2.1-1I

SAMPLE - NOTICE OF INTENT TO SEPARATE

UNDER PROCEDURES IN HB 30, Ch 5A

Name:_____
Address:_____

Dear Mr. _____:

This is advance notice that the Agency for International Development proposes to remove you from your position of _____ because of your inability to meet the medical standards for retention in the A.I.D. Foreign Service.

The basis for this proposal is the report dated _____ from the Medical Division, Department of State, in which you were found disqualified for overseas duty for medical reasons. If you have any questions concerning this report, please call my office to arrange an interview with the Medical Division, Department of State.

This letter constitutes formal notice of intent to separate you pursuant to procedures set forth in HB 30, Ch. 2G. You are advised that your separation is only a proposal at this stage, and that once all of the procedural requirements set forth in Ch. 2G have been met, you will be given notice of the Agency's final decision in your case. If the decision will include the effective date, which will be no earlier than _____ calendar days from the date you received this Notice of Intent. (Insert "30" or "60," depending on whether the employee has reemployment rights.)

During the notice period you will remain in active duty status in your current position. (Or, if employee's status is otherwise during notice period, explain precisely what his status is to be.)

You may reply to this letter in writing or orally, or both, stating any reasons you are to present as to why this proposed action should not be taken. You may also submit affidavits or medical opinion in support of your reply. A written reply should be addressed to this office and delivered no later than ____(date)____. If you choose to reply orally, call this office for an appointment. Any reply you make will be given full consideration before separation proceedings are continued. You will be informed in writing within five calendar days after receipt of your reply of its effect on the proposal to separate you from the foreign service, or, if you do not reply by the date specified above, of the next step on the proceedings.

(Add if applicable) Should separation proceedings be continued, you are entitled to a hearing by the A.I.D. Board of Review and Appeals, pursuant to HB 30, Ch 7G, and such hearing will be scheduled unless you choose to waive, in writing, this right.

If you require clarification or additional information regarding any of the above statements, other than the medical findings, please call upon (name, title, office location).

Sincerely yours,

_____
Title

Att. 2.1-1J

SAMPLE - NOTICE OF DECISION: REMOVAL UNDER "PROCEDURE 2M"

Name:_____
Address:_____

Dear Mr._____:

By letter of (date) you were informed of a proposal to remove you from position of (title of position).

The Agency has given full consideration to the information contained in your letter of (date) as well as to your oral presentation of (date). In addition, on the basis of a review of the findings of the Board, I have concluded that the charges stated in the Letter of Intent to separate you dated _____, that you are unable to meet minimum medical standards for retention in the foreigh service has been established at such hearing. Accordingly, you will be separated from the A.I.D. foreign service effective no earlier than (date).

(If employee is entitled to veteran's preference and has completed at least one year of continuous employment in the appointment from which he is being removed, add the following:)

You have a right to appeal this action to the Federal Employee Appeals Authority, U.S. Civil Service Commission, Washington, D.C. 20415. If you choose to appeal to that office your appeal must be in writing and must include:

a. Your full name, mailing address and signature.
b. The grade, title and location of your position.
c. The nature and effective date of the action.
d. The dates of all notices furnished you by the Agency.
e. Your reasons for believing the removal action is improper with such offer of proof and documents as you are able to submit.

An appeal to the Civil Service Commission in order to be considered must be submitted no later than 15 days after the effective date of your removal.

(Add if appropriate:) Our records indicate that you have reemployment rights in (name of agency). If you wish to exercise these rights, you must apply directly to that Agency for reemployment within 30 calendar days from the effective date of your separation from A.I.D. rolls. Otherwise, you will forfeit such rights.

(Insert paragraph regarding travel, transportation of effects, storage, taking of leave in excess of, housing, etc.)

If you require clarification or additional information regarding the content of this notice, please call upon (name, title, office location).

Sincerely yours,

_____
Administrator

Att. 2.1-1K

NOTICE OF PROPOSAL TO SEPARATE UNDER PROCEDURES IN HB 30, CH 2A

Name:_____
Address:_____

Dear Mr._____:

This is advance notice that the Agency for International Development proposes to separate you from your position of _____ because of your inability to meet the minimum medical standards for retention in the A.I.D. foreign service.

The basis for this proposal is the report dated _____ from the Medical Division, Department of State, in which you were found disqualified for overseas duty for medical reasons. If you have any questions concerning this report, please call this office to arrange an interview with the Medical Division, Department of State.

The effective date of your separation will not be less than 30 calendar days (60 calendar days if employee has reemployment rights in another Federal agency) from the date you receive this notice. You will be continued in an active duty status in your regular position during this advance notice period. Allowing time for direct travel to your United States residence via Washington, D.C., not to exceed 15 work days temporary duty (consultation) in AID/W, the effective date will be approximately May 23, 19__.

It is important that your dependants who traveled to post have completed prescribed medical examinations prior to the effective date of your separation. If your dependants have not completed prescribed medical examinations prior to the effective date, you will be deemed to have waived any future claim for medical examinations, treatment or care under the Foreign Service Act of 1946, as amended, for your dependants. The effective date of separation will not be delayed because your dependants have failed to complete prescribed medical examinations. There is no authority for the Department of State to examine or give treatment to any dependants of a person who is separated from A.I.D.

Agency records indicate that you may have reemployment rights in (name of Agency). If you wish to exercise these rights, you must apply directly to that Agency for reemployment within 30 calendar days from the effective date of your separation from A.I.D. rolls. Otherwise, you will forfeit such rights.

Pursuant to HB 30, Ch. 2G and HB 30, Ch. 2E, you are advised that the decision to separate you is final and carries no right of appeal within the Agency.

If you require clarification or additional information regarding the content of this notice (other than the medical findings), please call upon (name, title, office location).

FILE in front of page 3-1, HB 30, pending a complete revision of Chapter 3. Cross-reference to HB 30, Chapter 4.

*To be renumbered Chapter 13, HB 30.

Subject: Foreign Service Members Covered by the Civil Service Retirement System (CSRS)

This circular, with its attachment (3 FAM 675.1 - 675.5), provides information for those U.S. citizen members of the Foreign Service who are covered by the CSRS.

3 FAM 675.1 through 675.5 has been amended as a result of the Foreign Service Act of 1980 (FSA) and recent changes in the CSRS. Coverage and exclusions, as well as other provisions affecting CSRS participants, have been revised. Appendix A to 3 FAM 675, consisting of Installments 31 and 32 of the Federal Personnel Manual Supplement 831-1, Retirement (pp. 1-259), is not included with this Circular. Interested offices may obtain a copy of the Appendix by submitting a requisition to the AID Distribution Branch, M/SER/MO, Room B-927 NS. Copies are available for reference purposes in M/PM offices responsible for processing retirement papers for AID employees covered by the CSRS.

The attachment to this circular should be filed immediately after page 3A-56, Handbook 30.

*To be renumbered
Chapter 13, HB 30, in
the new Handbook series.

CHAPTER 3*

FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

3A. Purpose

Chapter 3 outlines requirements which pertain to AID participants in the Foreign Service Retirement and Disability System (FSRDS). Supplement 3C sets forth 3 FAM 670, the regulations of the FSRDS.

3B. AID Employee Coverage

1. The following members of the Service (as defined in section 103 of the Foreign Service Act (FSA) of 1980, as amended), are participants entitled to the benefits of the FSRDS:

a. Every member serving under a career appointment or as a career candidate,

(1) in the Senior Foreign Service or,

(2) assigned to a salary class in the Foreign Service Schedule.

b. Every chief of mission who is not a participant under paragraph (1) who --

(1) has served as chief of mission for an aggregate period of 20 years or more and

2) has paid into the Fund a special contribution for each year of such service in accordance with FSA section 805.

c. In addition to the above participants, any individual who was appointed as a Binational Center Grantee and who completed, prior to February 15, 1981, at least 5 years of satisfactory service as such a grantee or under any other appointment under the Foreign Service Act of 1946, may become a participant in the System, and shall receive credit for such service if an appropriate special contribution is

made to the Fund in accordance with 3 FAM 671.4, in attached Supplement 3C.

d. 3 FAM 671.3, in attached Supplement 3C, provides for participation by individuals who transfer to public international organizations, or who are converted under FSA section 2104 to the competitive service and are employed in an agency which is authorized to use the Foreign Service Personnel System.

2. Any otherwise eligible member of the Service who is appointed to a position in the Executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, shall not by virtue of the acceptance of such appointment cease to be eligible to participate in the System.

3C. Mandatory Participation

Since enactment of the Foreign Service Act of 1980, the Foreign Service Retirement and Disability System, administered by the Secretary of State, is the sole and exclusive retirement and disability system provided for the eligible Foreign Service personnel described in subchapter 3B, above. (An employee may also, however, be eligible for certain job-related injury or illness compensation or disability benefits as provided under 5 U.S.C., Chapter 81. See also FSA section 808; AID Handbook 29, Chapter 1G; 3 FAM 689; and paragraph 3K of this chapter.)

3D. Responsibility

1. Retirement Officer

The Chief of the Employee Relations Branch (M/PM/ERS) or designee is the AID Retirement Officer and serves as the AID representative to the Department of State on retirement matters. This officer is available for counsel and advice to individual employees regarding their rights, benefits, and obligations under the law, and for assistance to claimants and survivors of deceased employees. Any questions on retirement matters should be directed to the Retirement Officer.

2. Liaison Office

The Office of Financial Management, Employee Services Division (M/FM/ESD) is the AID liaison with the Department of State on retirement accounting matters.

3E. Retirement Eligibility

1. Voluntary Retirement

a. Any participant who is at least 50 years of age and has 20 years of creditable service, including at least 5 years of service credit toward retirement under the FSRDS (excluding military and naval service) may, on his or her own application and with the consent of the Director, Office of Personnel Management (M/PM/OD), or designee, be retired from the Service and receive retirement benefits (Foreign Service Act of 1980 as amended, section 811).

b. A participant who meets the requirements in 1a above, and who wishes to retire under section 811 of the Act, should submit Form OF-136 (formerly JF-32), Application for Retirement, to M/PM/ERS for approval by M/PM/OD, at least 3 months prior to the anticipated separation date.

c. The employee should propose a preferred retirement date. The Director, Office of Personnel Management, or designee, may concur in the proposed date and the approved application shall then constitute a retirement agreement between the Agency and the applicant.

d. The Director, Office of Personnel Management, or designee, may establish a retirement date other than that proposed by the applicant when one or more of the following conditions obtain:

(1) Applicant is the subject of a separation for cause action, or

(2) An Assistant Administrator, Office Director or comparable senior Agency official requests in writing that the applicant's services be extended to meet an urgent operational demand which may include but is not limited to conditions such as:

(a) Completion of a specific operational task,

(b) Maintenance of services pending identification of a replacement, or

(c) Emergency conditions at post, such as natural disaster or hostile action.

(3) Applicant has not completed at least one half of present overseas tour of duty or twelve months, whichever is less. If the applicant is less than twelve months into the current tour and an early release is approved, the applicant may be required to repay certain travel and transportation costs.

e. When the Director (or designee) selects a retirement date other than that proposed by the applicant:

(1) Such date will normally be no more than 120 days from the date requested by the applicant,

(2) The date will be such that the applicant will be able to retire with an immediate annuity, and

(3) No more than one extension shall be imposed except with the written concurrence of the applicant.

f. When the Director (or designee) receives the retirement application but does not agree to the proposed effective date, the applicant shall be promptly advised of an alternative date acceptable to the Director. Upon receipt of such advice, the applicant may withdraw the retirement application, propose a different date for consideration, or confirm in writing or by cable his/her concurrence in the Director's alternative date. The voluntary retirement application shall be processed to be effective as of the mutually agreed upon date. Unless subsequently extended by the Director per subparagraph 1e(3) above, the concurred in application shall constitute a retirement agreement between the Agency and the applicant.

g. When the Director (or designee) does not approve the retirement application, the employee shall be notified in writing and advised of the reason(s) for the disapproval. The disapproval may be grieved in accordance with Handbook 29, Chapter 4.

2. Discontinued Service

Any participant who is not eligible for an immediate annuity and who voluntarily separates from the Service after obtaining at least 5 years of service credit towards retirement (excluding military or naval service) may, upon separation from the Service or at any time prior to becoming eligible for an annuity, elect: (a) to have contributions refunded, or (b) to leave such contributions in the Fund and receive a deferred annuity commencing at age 60. (See FSA section 610(b) for exception.)

3. Mandatory Retirement*

The Foreign Service Act of 1980, section 812, provides as follows:

*Supplement 3A to this Chapter (Reserved) will contain regulations dealing with mandatory retirement for expiration of time in class (FSA sections 601(c)(1)and 607). Supplement 3B hereto covers mandatory retirement based on relative performance.

(a) "Except as provided in subsection (b), any participant shall be retired from the Service at the end of the month in which the participant has reached age 65 and has at least 5 years of service credit towards retirement under the System (excluding military and naval service), and shall receive retirement benefits in accordance with section 806.

(b)(1) Any participant who is otherwise required to retire under subsection (a) while occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, may continue to serve until that appointment is terminated."

a. Extension of Service Beyond Mandatory Retirement Age

Whenever the Director, Office of Personnel Management, determines it to be in the public interest, any participant who is otherwise required to retire for the reasons set forth in section 812(a) of the Foreign Service Act of 1980, may be retained on active service for a period not to exceed 5 years.

4. Retirement for Disability or Incapacity

a. The Foreign Service Act of 1980, section 808(a), provides:

"Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant) shall, upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 806. If the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age 65."

b. FSA, sections 808(b) through 808(f) and 3 FAM 672.2, appearing as Supplement C to this Chapter, further outline requirements and procedures for disability or incapacity retirement under the FSRDS. Interested employees should pay particular attention to: requirements relating to medical examinations; reemployment procedures or options and benefit payments if retired annuitant recovers from the condition; and the possible adjustment payments under the FSRDS if the original injury or condition was work-related and eligible for Federal Workman's Compensation.

Particular note should be made of FSA section 808(f) regarding the filing of a claim for disability or incapacity retirement under the FSRDS:

> "A claim may be allowed under this section only if the application is filed with the Secretary of State before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary of State for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary of State within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier."

(1) Application Filed by the Participant

(a) Participants who meet the requirements of 4a above should submit to M/PM/ERS, Form OF-136 (formerly JF-32), Application for Retirement, along with a description of their disability and the effect it has on the performance of their duties. If available, they should also enclose a statement from their private physician. If the participant has been judged mentally incompetent, his/her guardian may apply. In addition, the employee's supervisor completes a Form JF-32a, Superior Officer's Statement in Connection with Disability Retirement, and attaches it to the material to be forwarded to M/PM/ERS.

(b) Before being retired for disability, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to conduct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like examinations shall be made annually until the annuitant has attained age 65. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service with 1 year from the date recovery is determined.

(c) M/PM/ERS forwards the employee's application and statements to the State Department Retirement Branch (PER/ER/RET) and M/MED sends medical examination reports to the Director General of the Foreign Service, Department of State, for processing and approval.

(2) Application Filed by the Agency

When M/PM determines that an employee's performance does not constitute "useful and efficient service" and may be caused by

possible health problems, it may file the application for Disability Retirement. The general procedures to be used are as follows:

(a) M/PM counsels the employee concerning possible alternative action and his/her right to designate a representative to advise and assist in connection with the proposed action, and advises that a fitness for duty medical examination may be required.

(b) If after counseling the employee refuses to apply for disability retirement, M/PM advises the employee and/or his/her representative in writing of the reasons for the determination; the right to have a designated licensed physician review the case; the right to a medical examination if a fitness for duty examination has not been performed; and the right to reply within 15 days orally and/or in writing and to submit affidavits and/or other documentary evidence.

(c) Reasons and findings that are given to an employee are to be specific and detailed, except when they relate to a physical or mental condition about which a prudent physician would hesitate to inform the employee. In such cases, only general reasons and findings will be given. However, a full report of the medical evidence will be made available to a licensed physician who is designated in writing by the employee and/or his/her representative.

(d) If the employee refuses to submit to an examination, he/she should decline in writing. When it appears to be the result of a mental, emotional, or nervous condition, M/PM may continue to process the application for retirement.

(e) If the employee is found to be medically unfit for duty, i.e., useful and efficient service, on the basis of a medical examination conducted under the direction of M/MED, a Board of Medical Examiners is convened. The Board is composed of three qualified physicians and/or surgeons. M/MED designates two members, one of whom must be an expert or consultant who is not a full-time officer or employee of the Federal Government. The employee may designate the third member. Not more than one member may be a full-time employee of M/MED.

(f) The Board submits a report along with a statement of opinion to the Director General of the Foreign Service, Department of State, through PER/ER/RET, for review and decision.

(g) The Director General of the Foreign Service, Department of State, notifies the employee of the determination.

(h) Appeals

An employee who is dissatisfied with the determination made may request that it be reconsidered by submitting an appeal to the Deputy Under Secretary for Management, Department of State. The appeal should be submitted within 30 days following the date of receipt of notification from the Director General. The Deputy Under Secretary for Management reviews all the information available, along with any new evidence submitted, and makes a final determination in the case.

5. Reduction in Force

Participants who have completed at least 5 years of service credit toward retirement under the FSRDS, are at least age 60 and are separated as a result of a reduction in force, may elect to retire, since they are considered to have "voluntarily separated" for purposes of retirement. If they have not reached age 60, they may elect to receive a deferred annuity upon reaching that age.

3F. Creditable Service

1. With certain exceptions and/or contribution requirements, full-time civilian and active military service performed for the Federal Government is creditable. There are certain exceptions when full-time credit is allowed. Details on what constitutes creditable service may be obtained from M/PM.

2. Service at Unhealthful Posts

a. Participants in the Foreign Service Retirement and Disability System (FSRDS) assigned to unhealthful posts automatically receive post differential pay if it is prescribed for the post, or they may elect to receive extra service credit (ESC) toward retirement instead of post differential pay. All participants receive ESC while serving at an unhealthful post where no post differential is paid, effective on date of arrival at post.

b. ESC is granted in an amount equal to one-half the time spent at an unhealthful post exclusive of time away from post on temporary duty, consultation, or detail at other locations not classified as unhealthful. ESC is available only to FSRDS participants.

c. If participants desire to receive ESC for service at an unhealthful post, Optional Form 140 (OF-140), Election to Receive Extra Credit Towards Retirement (or revocation thereof), is completed and submitted to the Mission and a copy must be forwarded to M/PM. ESC becomes effective on the date of arrival at post if OF-140 (see *

* Revised

Supp. C) was completed upon initial arrival at post or the first day of the pay period following the date the election is made or changed. The election to receive ESC is irrevocable for the duration of the participant's assignment to that post, except that whenever there is a change by the Department in pay or benefits such as a raise in the pay ceiling or an increase or decrease in post differential, an election may be revoked within 60 days of such change. Cancellation of an election may be made only if there is a change in post differential, if the pay ceiling is raised or if the assignment is terminated. For this purpose, an assignment would be terminated by travel to the U.S. for home leave. Returning to the same post would constitute a new assignment, thereby permitting a new election. The completed original OF-140 must be submitted to M/PM by the Mission after the participant's departure from post.

d. ESC is earned while on home leave if, at the end of the home leave from an unhealthful post, the employee returns to that same post or transfers to another unhealthful post and elects ESC. If there is a transfer to a healthful post, the participant will receive ESC up to the date that service at the unhealthful post is terminated. ESC need not be terminated on departure for home leave.

e. Participants may be eligible for extra credit for prior service as non-participants employed by the U.S. Government at unhealthful posts if they made full contributions to the fund for such periods and received no post differential (see Supp. C, 3 FAM 673.3-1b for alternative deduction from annuity in lieu of full contribution). In such cases, the employee is to advise M/PM in writing identifying the post(s) and dates of service involved and the reasons why post differential was not received. After a review of personnel and payroll, the employee will be advised of the findings. It is not possible, under any circumstances, for an employee to refund the post differential received for prior service at an unhealthful post in order to obtain extra credit for such service. A non-participant may not waive the post differential in the hope of later becoming an FSRDS participant and then receiving the ESC.

f. ESC is creditable for the purpose of meeting the minimum length of service required for retirement eligibility, also for eligibility to continue health and life insurance coverage into retirement, if all other requirements have been met. However, it cannot be added in computing the employee's high-3 average salary for annuity purposes. Neither annual nor sick leave used while assigned to an unhealthful post is deducted in computing the ESC allowance.

3. Unused Sick Leave

The service of an employee who retires on immediate annuity or dies leaving a widow (or widower) entitled to a survivor annuity is

* Revised

increased by the days of unused sick leave to his/her credit. The days of unused sick leave are used only in counting the number of years and months of service for annuity computation purposes. They cannot be used in computing the employee's high-3 average salary or for meeting the minimum length of service required for retirement eligibility. However, unused sick leave may be credited without regard to the 35-year limitation indicated in 3Ilb below. A separate employee entitled to a deferred annuity at age 60 is not entitled to retirement credit for unused sick leave if he/she attains age 60 more than one month after separation.

3G. Voluntary Contributions

An employee who wishes to obtain a larger retirement annuity than is otherwise provided may make voluntary contributions to the Retirement Fund to purchase additional annuity, subject to certain restrictions. Employees interested in making voluntary contributions should contact M/PM for detailed information.

3H. Creditable Service for Which Deductions Were Not Withheld (Deposit Time or Refunded (Redeposit Time)

1. Employees who have had creditable civilian service for which no retirement deductions were withheld (deposit time) may make special contributions to the Fund prior to retirement. If payment is not made the time of retirement, ten percent of the amount owed at that time is deducted from the employee's annuity per year.

2. Employees who have had creditable civilian service for which retirement deductions were withheld and refunded, must make a special contribution to the Fund prior to retirement in order to receive credit for that service.

M/PM/ERS will advise employees on this subject when they become members of the FSRDS.

3I. Computation of Annuity

1. General Formula

A rough estimate of the annual amount of annuity* may be obtained by:

a. Determining average basic annual salary for the high-3 consecutive years of service;

b. Multiplying two percent of the above figure by the number of creditable years of service, not exceeding 35. Only 35 years of creditable service may be counted in the computation of annuity.

*If the retiree works for the Agency as a reemployed annuitant, the annuity payable in any year may be subject to deferral or reduction. See Handbook 25, Chapter 5, for further information.

However, sick leave may be counted without regard to the 35-year limitation.

The above formula gives an estimate. M/PM/ERS will provide a more precise estimate when requested by an employee who is considering retirement.

2. Death Benefits

Death benefits are of two kinds: survivor annuity and lump-sum payment. Survivor annuities may be payable to the spouse and children upon the death of an employee A lump-sum benefit may be payable upon the death of an employee if there is no spouse or children entitled to a survivor annuity, or if the survivor annuity is payable after the right of the last person entitled thereto has terminated. Information on conditions to be met and amounts payable may be obtained from M/PM/ERS.

3J. Refunds

A refund is payable under the following circumstances:

1. When a participant is separated voluntarily or involuntarily from the Service and is ineligible for a deferred annuity at age 60 because he/she has less than 5 years of creditable civilian service.

2. When a participant is separated from the Service and is entitled to a deferred annuity at age 60, but before reaching that age elects to have the refund instead of an annuity.

3. When a participant transfers to employment in which he/she is subject to another Federal civilian retirement system.

4. When a participant elects, either at time of retirement or separation for reasons other than retirement, to receive his/her voluntary contributions in the form of a lump sum.

3K. Applying for Retirement Annuity When Receiving Compensation for Work Injuries

Even though the employee elects to receive compensation for work injuries, the employee should also apply for an annuity upon separation. The annuity payment is suspended during the period he/she is receiving workmen's compensation. By so applying, the employee protects annuity rights and whatever survivor rights he/she has should compensation for work injuries be discontinued. If the employee desires to apply for a refund, he/she may do so. However, by so doing the employee forfeits the right to his/her annuity.

3L. Recognition at Time of Retirement

1. Retirement Plaque

A Retirement Plaque is presented to each retiring employee in the presence of suitable ranking staff and the retiring employee's colleagues. The plaques are requisitioned by M/PM/FSP from the Office of Management Operations (M/SER/MO) on Form AID 5-7, Supplies/Equipment Services Requisition. The name of the retiring employee, retirement date, and length of service computed to the closest year, is provided by M/PM/ERS. The mission advises M/PM/FSP when the plaque is to be sent to the mission or, in unusual circumstances, mailed directly to the employee's separation residence.

2. Commendation

In addition to the plaque, it may be desirable to present a letter of commendation. It is the responsibility of the following officials, or their designees, to sign and present the letter:

a. The Administrator, for Section 624(a) statutory officers, 625(b) supergrade employees, 631(b) Mission Chiefs, Deputy Mission Chiefs and AID Representatives, and SFS members.

b. Mission Chiefs and AID Representatives for employees retiring at post.

c. Assistant Administrators and Heads of Offices or Staffs for all other employees.

Supplement 3A - Mandatory Retirement for Expiration of Time in Class (Reserved)

Supplement 3B - Mandatory Retirement Based on Relative Performance

Supplement 3C - 3 FAM 670

SUPPLEMENT 3A

MANDATORY RETIREMENT FOR EXPIRATION OF TIME IN CLASS (TIC)

1. Purpose

This supplement provides the policies and the procedures dealing with mandatory retirement due to TIC limitations.

2. Applicability

This supplement applies to all direct-hire, U.S. citizen employees of the Senior Foreign Service (SFS) and career Foreign Service (FS) subject to the Agency's TIC limitations required by the Foreign Service Act of 1980.

3. Authorities and References

a. Foreign Service Act of 1980, as amended, Sec.607, 609, 806, 811-813, 2102, 2103, 2106.

b. HB 25, Ch. 37 & 38; HB 30, Ch. 3.

See HB 25, Ch. 37H1 for the transition provisions covering implementation of this policy for classes FS-01 and below.

4. Policy

It is Agency policy to mandatorily retire members of the SFS and career FS employees upon expiration of TIC limitations established in accordance with the authorities and administrative regulations cited above.

5. Responsibilities

a. Foreign Service Personnel Division (PFM/PM/FSP)

Establishes and manages the necessary system(s) to identify and track TIC dates for all FS employees serving in career appointments under its jurisdiction, and notifies individual employees in writing of the actual TIC date established and again at least six months in advance of the actual TIC expiration date. TIC limitations of FS employees in BS-08 (Auditors and inspectors) are managed by IG/ADM as provided in 5c.

b. Executive Personnel Management Staff (PFM/PM/EPM)

Establishes and manages the necessary system(s) to identify and track TIC expiration dates for all FS employees under its jurisdiction, and notifies individual employees in writing of the TIC date established. In the event an SFS employee is not offered a Limited Career Extention (LCE), EPM will notify the individual of the impending TIC expiration at least six months in advance. See HB 25 Ch.38 for information on LECs.

c. Office of Administration Office of the Inspector General (IG/ADM)

Establishes and manages the necessary system to identify and track TIC expiration dates for FS and SFS employees under its jurisdiction (BS-08, Auditors and Inspectors), and notifies individual employees in writing of the actual TIC date established and again at least six months in advance of the actual TIC expiration date.

d. FS Career Employees

Verify the accuracy of the TIC date established for them by their respective employing offices

6. Procedures

a. The effective date of retirement will be set by the Agency, and will be within the six-month period immediately following the TIC expiration date, including members covered under HB 25, Ch. 38Jb(5). The administrator may extend the effective date of retirement up to one year in the public interest; further extensions will not be available.

b. SFS employees and FS employees of class FS-01 who are promoted prior to the effective date of their mandatory retirement due to TIC expiration will have their TIC date recomputed by the responsible office. The recomputed date will become the new TIC date for purposes of this supplement.

c. SFS and FS employees whose TIC expires after the convening of the Selection Board reviewing their file will remain eligible for promotion consideration. SFS and FS employees whose TIC expires prior to the convening of their respective Selection Boards will not be eligible for promotion consideration.

d. FS employees who have reached their maximum time in class or LCE, but who are serving in positions to which they were appointed by the President with the advice and consent of the Senate, will be extended until the appointments to such positions are terminated.

Supplement 3 B*

Mandatory Retirement Based on Relative Performance

1. Career members of AID's Foreign Service and Senior Foreign Service (the Service) shall be retired for failure to meet the standards of performance for the classes in which they serve (Section 608 of the Foreign Service Act of 1980).

2. Selection Board Responsibilities

Each Selection Board which reviews career members of the Service will identify in each competition group, in accordance with the Board's Precepts (see HB 25, Ch 10)**, those members of the Service who meet promotion eligibility requirements but are least competitive in terms of performance or potential. Of the members so identified the Selection Boards will designate those whose records indicate that they may not have met the standards of performance for their class. Those members of the Service so designated shall be referred to a Performance Standards Board (PSB) which will independently determine whether they have met the standards of performance for their class. Those members designated for PSB review will be notified of this fact by the Office of Personnel Management, Overseas Division.

3. Performance Standards Board Responsibilities

a. PSBs will be convened by the Overseas Division, Office of Personnel Management (M/PM/OS) as may be required by the number and classes of career members designated for PSB review by Selection Boards. PSBs will determine, on the basis of their Precepts, whether career members should be retired for failure to meet the performance standards for their classes.

b. Each PSB shall be made up of at least three members who, to the fullest extent feasible, shall all be career members of the Service of the class at least one level above those members of the Service reviewed by the Board. The members of PSBs shall be selected by the Director, M/PM, and shall be knowledgeable about the occupational requirements of the categories of employees they review. The names of prospective PSB members will be reviewed by the exclusive employee representative in accordance with existing collective bargaining agreements on the composition of Selection Boards.

*To be renumbered 13B in the new Handbook series.

**To be renumbered Handbook 25, Chapter 40 in the new Handbook series.

c. PSB criteria for determining whether or not a member has met the standards of his or her class are contained in the PSB Precepts which establish the standards of performance for members of the Service. The wide variety of both Foreign Service functions and working conditions precludes defining specific and fixed class standards embracing precise requirements. Therefore, the performance standards are expressed in broad terms. In general, the PSBs shall weigh heavily documented shortcomings in one or more skills and abilities or areas of knowledge that are pertinent to the occupational backstop of the employee reviewed. A member's failure to meet the standards of a class may be manifested in relative or comparative shortcomings in necessary qualities or skills in comparison with other members in the same class and occupational backstop.

d. The PSBs will review or have available for reference during their deliberations only the following material:

(1) A copy of the Foreign Service Act of 1980 and of these regulations;

(2) A copy of the PSB Precepts and the relevant Selection Board Precepts;

(3) The official performance files of the members reviewed;

(4) Selection Board class rankings for the previous five (5) years for the members being reviewed, and justifications for PSB findings (see 3e below) of the previous three (3) years, if any, concerning employees reviewed while in present class together with the record of any actions taken;

(5) Lists of the members who competed against those designated by Selection Boards for PSB review; and

(6) Any other material which was available to the Selection Board which low-ranked the members under review.

e. At the conclusion of their review, PSBs shall submit to the Director, Office of Personnel Management (M/PM) their findings which shall include an alphabetical list of the members designated for mandatory retirement under section 608 of the Act along with individual statements justifying the Boards' decisions. These statements shall indicate the areas of performance or potential where the members did not meet the standards of their present class. The PSB shall also submit individual statements supporting the decisions regarding those members who were deemed to have met the standards of their classes.

f. Members designated for mandatory retirement by PSBs will be informed promptly in writing, provided a copy of the PSB statement of justification, and informed of the specific date for retirement from the Service. They also will be advised in writing of their rights of appeal of the PSB decision to a Special Review Board (SRB) within twenty working days of their receipt of the PSB decision and of their right to be heard by the SRB in accordance with 4c below.

g. Members reviewed but not designated for mandatory retirement by the PSBs also will be informed promptly in writing of this fact and provided a copy of the PSB's statement.

h. Where the PSB determines that a member or limited appointee did not meet the standards of his/her class, the member or limited appointee shall not be advanced to the next higher salary step in his/her class.

4. Special Review Boards (SRBs)

* a. Where a member is notified of both his/her designation for mandatory retirement by a PSB and an effective date for that retirement, the member may appeal the action to an SRB in accordance with this section or may file a grievance under 3 FAM 660. But, the member may not file both. When an effective date of retirement is not set, any issues the member wishes to raise in connection with the mandatory retirement designation may be grieved only in accordance with 3 FAM 660. An appeal to an SRB does not preclude a proceeding under 5 USC, Chapter 12.

b. A written notice of appeal to an SRB must be submitted by the member to M/PM/LMR within 20 work days after receiving notice of the PSB decision for mandatory retirement. M/PM/LMR will convene an SRB to conduct an administrative review of the PSB decision and to uphold or overturn the decision.

c. SRBs shall be made up of three career Foreign Service members at or above the appellant's class and, to the extent possible, they should be senior in class to the appellant. They will be selected by the Director, M/PM in accordance with Att. 3B2 to this supplement. Also, each SRB shall be assisted by a procedural advisor who is not an official of AID and who is experienced in hearings relating to adverse personnel actions. The procedural advisor will not vote or participate directly in the disposition of the appeal but will advise the SRB on procedures and rulings to assure administrative due process. The names of the proposed SRB members and the proposed procedural advisor shall be submitted to the exclusive bargaining representative for comments. *

d. SRBs shall conduct a hearing to receive oral testimony and to consider all evidence concerning the member's performance that was available to the PSB. The appellant has the right to introduce evidence in writing or orally at the hearing. The SRB shall base any decision to overturn the PSB determination to retire the member mandatorily only on one or more of the following grounds:

* Revised

(1) Additional evidence clearly shows that the PSB's finding relied in determinative part on material that was erroneous, falsely prejudicial or inaccurate; or

(2) The PSB failed to comply with its Precepts; or

(3) Additional evidence indicates that severe or extraordinary circumstances beyond the control of the appellant temporarily affected adversely the appellant's performance, but are not expected to recur.

e. Appellants have the right to choose a representative who may be present during every stage of proceedings before an SRB. If the appellant is overseas and elects to be present during the proceedings, he/she shall be afforded one round trip and a reasonable number of days TDY in AID/Washington to do so.

f. The first hearing of an SRB shall not be sooner than 45 calendar days from the receipt of the PSB notice by the appellant, to allow a reasonable time to prepare the appellant's case before the SRB.

g. After reviewing all the evidence, the SRB shall decide by majority vote to sustain the PSBs decision or to overturn it. The SRB's decision shall be in writing to the Director, M/PM, with copies to the appellant.

h. If the SRB overturns the PSB decision, it may also recommend that the Director, M/PM, take further remedial action logically stemming from the decision such as expunging from the performance file any erroneous or falsely prejudicial or inaccurate material. The SRB may also recommend the inclusion of appropriate materials to make the record whole.

i. If the SRB overturns the PSB decision, the member may continue in the Service without prejudice, but the time-in-class limits will not be extended to make up for any period of Selection Board ineligibility resulting from the earlier PSB decision unless such extension is ordered as the result of a separate grievance action.

j. If the SRB upholds the PSB decision to retire a member mandatorily, the member may request, within 10 working days of the SRB decision, reconsideration of the case. The SRB may agree to reconsider a case if the member can show (a) specific error of fact or interpretation of fact in the SRB's original finding or (b) newly discovered or previously unavailable material evidence.

k. An SRB decision to uphold a PSB decision becomes final and binding following:

(1) the expiration of 10 working days following the appellant's receipt of the SRB decision, if no written request for reconsideraton is filed;

(2) the denial of the appellant's request for reconsideration; or

(3) the reaffirmation by the SRB of its original decision. Such a decision constitutes final administrative action, and the Director of the Office of Personnel Management will implement it in accordance with Handbook 30, Chapter 3.

5. Retirement Decisions

a. Upon receipt of decision lists from the PSBs noted under section 3.e above and/or decisions and/or recommendations of the SRBs per section 4.f or 4.g above, the Director, Office of Personnel Management, shall review the list to ensure that individual members designated thereby should not be mandatorily retired:

- for reasons unknown to SRB or PSB members, e.g., a member is participating in a rehabilitation program may temporarily exclude the member from such actions, or

- because such would not be in the best interests of the Agency and its operations, e.g., a member is in a critical shortage skill category.

Members identified for the preceeding reasons will be removed from the list and advised to that effect in writing.

For designees remaining on the list, the Director, M/PM, shall take such actions as are appropriate to process them for mandatory retirement.

b. For each member designated to be retired for relative performance, the Director shall consult with concerned Bureau management officials to determine whether the immediate retirement of a designated member is contrary to the interests of the Agency. If there is not compelling justification for the retention of a designated member, then M/PM shall proceed to process that individual for retirement as discussed below. If there is a difference of opinion as to the need for that individual member's services, between the Director, M/PM, and Bureau management officials, the matter shall be referred to the AA/M for a final decision.

6. Effective Date of Retirement and Notification

a. Members of the Service who are designated for mandatory retirement under section 5.a above will have their effective dates of retirement set by the Director, Office of Personnel Management. For retirements based on relative performance, such dates shall be set to be effective within six months after the Director, M/PM, receives the list from the PSB.

b. M/PM/OS will notify a member of the Service in writing as soon as the effective date of retirement has been set under 6.a above. Such members shall be given at least 30 days' notice before retirement is to be effective. If the member has reemployment rights with another Federal agency, he/she will be given a minimum of 60 days notice to facilitate application to his/her parent agency for reemployment.

7. Postponement of the Effective Date for Retirement

a. Notwithstanding section 6.a above, the Director, Office of Personnel Management, may in special circumstances postpone the effective date of retirement in the public interest. No such extension may exceed one year.

b. Members whose effective date of retirement is postponed under this section will not be eligible for promotion. Members whose retirement is based on relative performance and who are serving under an extension per section 7.a above shall not receive a within-grade salary increase during this period.

c. As related to this section, and to the extent not prohibited by law or regulation, the Agency agrees to abide by any determination for prescriptive relief provided by the Special Review Board or the Foreign Service Grievance Board. Further, the Agency will implement the determination of the Foreign Service Grievance Board in accordance with Chapter 11 of the Foreign Service Act of 1980.

8. Retirement Benefits

a. Members of the Service retired under this section will receive retirement benefits in accordance with Section 806 of the Act, except that members of the Service in classes FS-9 through 2 who are retired hereunder and are not then eligible for voluntary retirement under Section 811 of the Act, shall receive benefits under Section 609(b) of the Act.

b. Any member of the Service who is eligible for voluntary retirement may, upon his/her request, be granted such retirement in lieu of mandatory retirement.

9. Actions by the Office of Personnel Management

a. M/PM/OS, M/PM/EPM and/or M/PM/ERS shall take such actions, as appropriate, to support the PSBs and SRBs and to administer this regulation, including, e.g., notifying each concerned member in writing of designations, decisions, rights or actions relating to sections 2, 3f, 3g, 4, 5, and 7.

b. Letters notifying the member of his/her mandatory retirement and the effective date thereof, per section six, above, shall be prepared by M/PM/ERS for signature of the Director, Office of Personnel Management.

c. Members of the Service who are being mandatorily retired for relative performance will normally be granted transit time for direct travel from post to Washington for TDY, thence to separation residence in the United States.

Attachment 3 B1 to
Supplement 3B, HB 30*

PRECEPTS FOR PERFORMANCE STANDARDS BOARDS

1. Purpose

a. This establishes the Precepts for the Performance Standards Boards (PSBs) which will be convened to review for possible mandatory retirement, formerly "selection out," career members of AID's Foreign Service and Senior Foreign Service (the Service) who have been identified by the Selection Boards as possibly having failed to meet the standards of performance for their class, and who have been certified to the PSB by the Director, Office of Personnel Management (Director, M/PM) in accordance with the Selection Board regulations. In accordance with HB 30 Supp. 3 B, these Precepts establish the criteria by which the PSBs will determine whether a career member of the Service under review should be designated for mandatory retirement.

b. Members of the Service designated for mandatory retirement by the PSBs will be retired from the Service unless such action would not be in the best interests of the Agency or is reversed through the appellate process. Members who wish to challenge a PSB designation of mandatory retirement may appeal to a Special Review Board in accordance with the regulations attached. This Board will afford appellants a hearing at which they may be represented by counsel and present witnesses and other relevant information and will decide whether to uphold or reverse the determination of the PSB.

c. This document was agreed to between AID and the American Foreign Service Association (AFSA) under Chapter 10 of the Foreign Service Act of 1980. The agreement became effective November 10, 1983.

2. Applicable Regulations

a. Handbook 30, Supp.3B contains the regulations governing the responsibilities, organization and operation of Performance Standards Boards and the rights of career members of the Service under review.

b. PSBs will be guided in their activities and procedures by those regulations as supplemented by these Precepts.

3. PSB Criteria for Mandatory Retirement

The principles by which the PSBs are to judge members of the Service for possible mandatory retirement are as follows:

*To be renumbered Attachment 13B1 in the new Handbook series.

a. The wide variety of both Foreign Service and Senior Foreign Service functions and working conditions precludes defining specific and fixed class standards embracing precise requirements. Therefore, the performance standards are expressed in broad terms. In general, PSBs shall weigh documented shortcomings in one or more skills, abilities or areas of knowledge that are pertinent to the occupational backstop of the member reviewed. A member's failure to meet the standards of a class may manifest itself in relative or comparative shortcomings in necessary qualities or skills in comparison with other members in the same class and occupational backstop.

b. In judging the relative performance of a member under review, each PSB will give particular weight to documented shortcomings in the performance of continuing responsibilities, accomplishment of specific objectives, competencies, etc. set forth in Handbook 25, Chapter 10, including factors identified in Evaluation or Selection Board Precepts which may in themselves be possible grounds for low ranking.

c. There is no precise formula by which a PSB may calculate whether a member's performance has met the standards for the class. Prior to reviewing the performance of the members referred to it, each PSB will review a sufficient number of performance records of other members in the class of the member under consideration to satisfy itself that it has a reliable measure of the character and quality of performance in the relevant class and occupational backstop. As a representative sample, the Board will review at least five (5) percent of all performance files picked at random from the member's class, except that for classes with fewer than 200 files a minimum of ten (10) files will be reviewed, or all files in classes of fewer than ten (10) members. Each PSB will then review the record of the member--in consideration of the criteria in paragraphs 3a and 3b above--comparing such record with first the representative sample to determine whether the member has met the standards of performance of the present class. To assist in this review, the PSB may request additional files (if any exist) selected at random from within the particular occupational backstop (and class) of the member under review.

d. To justify a designation of mandatory retirement for relative performance, a PSB need not conclude that the member's performance was unsatisfactory per se or that the member's utility to the Service is marginal in an absolute sense. Rather, its duty is to examine the performance records of the member under review and related material, in comparison with the records of other members of the class and occupational backstop, and to designate for mandatory retirement those whose performance (judged in terms of assigned duties, goals, and work requirements), whose deficiencies in work-related personal qualities or professional skills, or whose limited potential for personal and/or professional growth and development indicate that they should be separated from the Service.

e. The time remaining before a member arrives at what may be mandatory retirement either for age or time in class is not relevant to a PSB's assessment of a member. Nor will the PSB give any consideration whatsoever to the age, sex, national origin, religion, or race of an employee, or existence of a handicap, which are also irrelevant to the Board's decision.

f. A PSB should note the admonitions in the Selection Board Precepts against penalizing unfairly a member who has received an honest, candid, or constructively critical report. A review of the member's prior rankings in present class and other evaluation reports prepared by the rating officer(s) may be useful in this regard.

g. Ordinarily a designation of mandatory retirement will not be based solely on the reports of a single officer. In the vast majority of cases, the Board should be able to satisfy itself that some or all of the critical shortcomings have been reflected in the report of more than one rating officer. A single evaluation report will not be the sole basis for designation for mandatory retirement. Where a Board's decision rests predominantly on the report of one rating officer, it will assure itself as fully as feasible of the general validity of the rating and that there is no indication of unfair negative bias by the rating officer. If necessary, the Board may examine evaluation reports of other members which were prepared by the same rating officer.

4. Proscriptions Against Outside Inquiry

a. Prohibition Against Obtaining Other Information

(1) A PSB will address questions about its work only to the Overseas Division (M/PM/OS).

(2) PSB members will have available only the material specified in HB 30, Supp. 3B, 3.d. They will neither seek nor receive, from any source, any information (other than that properly included in material before the PSB) on, for example, health, suitability, assignability, or reputation of any member of the Service under consideration.

(3) Should any unauthorized communications of the character referred to in paragraph (2) above come to the attention of a Board member, he or she will report this in writing to M/PM/OS.

b. Personal Knowledge of Board Members

(1) If a PSB member brings to the Board's attention information which is not included in the file of a career member and is relevant to consideration of the career member's performance, he/she shall do so only by means of a signed memorandum. In such cases, the Board member will be excused from further participation in the decision of the Board. The additional information shall cover only admissible matters up to the date of the latest evaluation report available to the most recent Selection Board.

(2) A copy of the signed memorandum shall be forwarded immediately to the career member under review (by immediate cable if he/she is overseas) to permit him/her to comment on it before the Board completes it deliberations. The member will be simultaneously advised that any comments must be dispatched to the Board within ten (10) working days of the date of receipt of the memorandum. The post or bureau will reply immediately to the memorandum or message indicating whether problems exist in effecting delivery, when delivery was made to the member, and whether he or she intends to comment. A member will be entitled to such administrative leave as may be necessary to permit a timely response. Unless a member has chosen not to comment, the Board will take no further action pending receipt of the member's response. Beyond having been notified by a post or bureau that a member intends to comment, if the ten (10) day member response period has elapsed, the Board need not delay its decision for lack of comments unless, in its judgment, the Board is able to delay a decision longer without significant administrative dislocation.

(3) A PSB member who was the career member's rating or reviewing officer while the career member was in present class will excuse himself or herself from participating in making a decision.

5. Decision Rule

The decisions of the Board regarding mandatory retirement will be by majority vote. These decisions shall be communicated in writing, along with statements justifying such Board decisions, to the Director, M/PM.

6. Oath of Office

All Board members will adhere to the following oath:

> "I, _____, do solemnly swear (or affirm) that I will, without prejudice or partiality, perform faithfully and to the best of my ability the duties of a member of a Performance Standards Board; that I will preserve the confidential character of the personnel records used by the Board; and that I will not reveal to any unauthorized person information concerning the deliberations, findings, and recommendations of the Board. So help me God."

7. Special Instructions

a. Cross-reference this document to HB 25, Ch 10.

b. When this document is in conflict with any other regulation, this document shall prevail.

Attachment 3B2* to
Supplement 3B, HB 30

PRECEPTS FOR THE SPECIAL REVIEW BOARD

1. Purpose

a. This document establishes the Precepts for the Special Review Board (SRB) which will be convened for any member of AID's Foreign Service or Senior Foreign Service (the Service) who exercises the right of appeal from a Performance Standards Board's (PSB) designation for mandatory retirement for relative performance under Section 608 of the Foreign Service Act of 1980.

b. Members of the Service who wish to challenge a designation for mandatory retirement by a PSB must submit a written notice of appeal to a Special Review Board within twenty calendar days of receiving notice of the PSB decision. The notice should be directed to the Overseas Division (M/PM/OS) Office of Personnel Management, Agency for International Development. The SRB will conduct an administrative review of the PSB decision to uphold or overturn that decision. An SRB decision to overturn a PSB decision is final and binding (see Section 4.j of Supplement 3B** to this chapter for guidance when the SRB upholds a PSB decision).

2. Applicable Regulations

The criteria and requirements in this document supplement the regulations governing the responsibilities, organization and operations of SRBs which are set out in HB 30, Supp. 3B**. SRBs will be guided in their activities and procedures by those regulations as augmented by these Precepts.

3. SRB Membership

The members of the SRB appointed under HB 30, Supp 3B** will, to the extent practicable, be experienced in varying Foreign Service areas and be knowledgeable about the occupational backstop of the appellant. If feasible, at least one SRB member will have had direct work experience in the appellant's occupational backstop. The name of the proposed procedural advisor to the SRB will be submitted to the employee representative for comment as well as the names of prospective SRB members which will be reviewed by the employee representative in accordance with existing collective bargaining agreements on the composition of Selection Boards. The procedural advisor shall not be a full-time AID official or have served within the last two years in any capacity representing AID's interest against an individual employee's claim or complaint. The procedural advisor will not recommend the ultimate disposition of any appeal.

*To be renumbered Attachment 13B2 in the new Handbook series.

**To be renumbered Supplement 13B in the new Handbook series.

4. Rights of Appellant

In addition to the rights specified in HB 30, Supp 3B, the appellant has the right to the following.

a. Access to AID's communications facilities for transmission of messages relevant to the appeal.

b. Access to any AID record requested to substantiate the appeal which the SRB deems relevant to the proceeding. When deemed appropriate by the Agency or the Board, the appellant may receive only a summary or extract of classified material. Disclosure of any official AID record to the SRB or an appellant is not required where the Administrator of AID or his deputy determines in writing that such disclosure is not in accordance with the Privacy Act or the Freedom of Information Act of would adversely affect the foreign policy interests or national security of the United States. Access to the appellant's personal records shall be governed by HB 18, Ch 12 or successor regulations.

c. As approved by the supervisor, a reasonable amount of normal duty time to prepare his/her case. This applies equally to the appellant's representative if an employee of AID. Official time may not be unreasonably withheld.

d. Travel orders and subsistence (for appellant only) for temporary duty in the Washington, D.C. area. Washington subsistence may begin up to ten working days before the scheduled date of the hearing.

5. Board Procedures

a. Documentary Material

Before the first pre-hearing conference, the Board and appellant will receive a list of and access to all material that was available to the Performance Standards Board including the Performance Standards Board precepts and a copy of the PSB's statement of justification for its mandatory retirement designation.

b. Schedule

The chairperson of the SRB will set a date for the appeal hearing which is not less than 45 days after the appellant's receipt of written notice. The appellant will be promptly notified of this date so that preparations for the appeal may be completed, if the appellant is overseas, travel to Washington, D.C. may be scheduled. If the appellant believes that the scheduled hearing date does not permit adequate time to complete preparations for the appeal, a request for extension of the date

must be promptly submitted to M/PM/OS (by immediate cable, if overseas) explaining the reasons why additional time is required. The chairperson may reschedule the hearing for a later date, if satisfied that the delay is necessary to permit the appellant to complete preparations for the hearing, fairly and adequately.

c. Pre-Hearing Conference

(1) The Chairperson of the SRB and the procedural advisor will conduct one or more pre-hearing conferences with each appellant and representative to define and narrow the issues. The conferences are to address any procedural questions and to establish, insofar as possible, the scope of material the Board is to consider; the number and identity of witnesses; and the timing and content of interrogatories and to address procedural questions. If the appellant is overseas, the chairperson will seek relevant information by telephone or cable. A pre-hearing conference will be held as promptly as possible after the return to Washington of the appellant for the hearing (see section 4d following).

(2) At the first conference, the Chairperson will set a deadline for the appellant to submit:

(a) A list of witnesses the appellant wishes to have testify at the hearing;

(b) Written interrogatories the appellant wants sent to persons likely unable to appear in person; and

(c) Information on the evidence which each witness or interrogatory is expected to provide, when requested by the Board.

(3) Should the SRB wish to call any witnesses or prepare any interrogatories, or should it desire to include information for the record, it shall give the appellant reasonable advance notice and shall provide the appellant with an appropriate opportunity to respond to the information included, or to call further witnesses or submit interrogatories in response. The appellant may request up to 20 working days to prepare responses to information included by the SRB, and this request shall be granted.

(4) The appellant may present the texts of Foreign Service Grievance Board decisions to the Board to establish prior adjudication of relevant issues. Conversely, the Board shall ask AID whether any documents or issues which the appellant wishes to contest in the appeal have received prior Grievance Board adjudication. The SRB shall recognize a decision of the Grievance Board as the definitive adjudication of all issues and contentions which the Grievance Board addressed (for example, the accuracy and validity of a performance appraisal report).

d. Conduct of the Hearing

(1) The appellant and representative are entitled to be present at the hearing. Only those who have the necessary security clearances may have access to classified material being presented or discussed. AID will expedite security clearances whenever the Chairperson so requests in order to ensure a fair and prompt hearing before the SRB.

(2) Testimony at a hearing shall be given under oath or affirmation which any Board member or person designated by the Board shall have the authority to administer.

(3) The appellant may present to the Board such material as the appellant believes supports the appeal. Information which would normally be inadmissible in the appellant's evaluation report may be raised by an appellant before the SRB. The appellant and members of the SRB shall be entitled to examine and cross-examine witnesses at the hearing, and to serve interrogatories on other parties and have such interrogatories answered. The SRB may ask for justification of and rule on the relevance and materiality of the appellant's interrogatories. Any specific interrogatory presented must be complete and unexpurgated. If the Board approves requesting additional witnesses or interrogatories, the Chairperson may recess the hearing pending their availability.

(4) Upon request of the SRB, or upon a request of the appellant which is deemed relevant and material by the Board, AID shall promptly make available at the hearing or by interrogatory at no cost to the appellant any witness under its control, supervision, or responsibility.

(5) During any hearings held by the SRB, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial or unduly repetitious evidence normally excluded in hearings conducted under the Administrative Procedures Act (5 U.S.C. 566).

(6) The appellant may present concluding arguments.

(7) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

e. Post-Hearing Brief

The appellant may present a post-hearing brief summarizing the testimony and arguments.

6. Decisions

a. Upon completion of the hearing, the Board shall expeditiously decide the appeal on the basis of all the oral and documentary evidence it has received in the course of the hearing and the entire written record thereof. The Board shall not consider any other material. The SRB's written decision will include findings of fact and set forth the reasons for its decision. The decision will go to the Administrator with copies to the appellant and representative, if any. A dissenting opinion may accompany the SRB decision.

b. As authorized in the regulations, an SRB decision to overturn mandatory retirement based on relative performance may include supplementary recommendations for corrective action logically stemming from the decision, such as recommendations for expunctions from the performance file of erroneous or prejudicial material; insertion by the Director of Personnel Management of a statement explaining, clarifying, or putting into perspective, performance evaluations; or recommendations for extension of time-in-class or other actions deemed necessary to correct any prejudice found. Any such board recommendations should be precisely framed to facilitate their implementation and should be supported by written justification. Such recommendations will not be binding, but if not implemented, the appellant may pursue such remedies as may be available though the normal grievance process.

7. Waiver

An appellant may waive the right to a hearing, present documentary evidence to the SRB and request that it rule on the case on this basis. Such a waiver must be in writing.

8. Oath of Office

All Board members will adhere to the following oath:

> "I, _____, do solemnly swear (or affirm) that I will, without prejudice or partiality, perform faithfully and to the best of may ability the duties of a member of a Special Review Board; that I will preserve the confidential character of the personnel records used by the Board; and that I will not reveal to any unauthorized person information concerning the deliberations, findings, and recommendations of the Board. So help me God."

9. Special Instructions

a. Cross reference this document to HB 25, Ch 10.

b. When this document is in conflict with any other regulation, this document shall prevail.

670
RETIREMENT

671 THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

(TL:PER-33 5-31-85)
(State Only)

671.1 Authorities

The regulations contained in sections 671 through 673 are prescribed under the following authorities:

a. Chapter 8 of the Foreign Service Act of 1980 (hereafter referred to as the Act).

b. Any Executive order issued under authority of section 827 of the Act including No. 12289 of February 14, 1981.

671.2 Definitions

For purposes of sections 671, 672, and 673:

a. "Act" means the Foreign Service Act of 1980.

b. "Agencies" means the Department of State, the Agency for International Development (AID), the U.S. Information Agency (USIA), the Foreign Commercial Service (FCS) of the Department of Commerce, the Animal and Plant Health Inspection Service (APHIS) and the Foreign Agricultural Service (FAS) of the Department of Agriculture, and the Peace Corps (PC).

c. "Annuitant" means any person including a former participant or survivor who meets all requirements for an annuity from the Fund under the provisions of the Act of 1980, or any other law and who has filed claim therefor.

d. "Basic salary" means the salary fixed by law or administrative action before deductions and exclusive of additional compensation of any kind. It includes the salary fixed by sections 401, 402, 403, and 406 of the Act and salary incident to assignment under section 503 of the Act. Basic salary excludes premium pay for overtime, night, Sunday and holiday work, allowances, post and special differentials, and chargé pay.

e. "Chief of Mission" means a principal officer in charge of a diplomatic mission of the United States or of a United States Office abroad which has been designated diplomatic in nature or any member of the Foreign Service assigned under the terms of the Act to be chargé d'affaires or head of such a mission or office.

f. "Child" means, except with reference to lump-sum payments, an unmarried child, under the age of 18 years, or such unmarried child regardless of age who because of physical or mental disability incurred before age 18 is incapable of self-support. In addition to the offspring of the participant, the term includes:

(1) An adopted child;

(2) A stepchild or recognized natural child who received more than one-half support from the participant; and

(3) A child who lived with and for whom a petition of adoption was filed by a participant, and who is adopted by the surviving spouse of the participant after the latter's death.

"Child" also means an unmarried student under the age of 22 years. For this purpose, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while a student, is deemed to have become 22 years of age on the first day of July after the birthday.

g. "Court" means any court of any State or of the District of Columbia.

h. "Court Order" means any court decree of divorce or annulment, or any court ordered or approved property settlement agreement incident to any court decree of divorce or annulment.

i. "Department" means the Department of State.

j. "Divorce" means the dissolution of a marriage by a final judicial decree of divorce or annulment.

k. "Expressly provided for" means a direction by a court order to divide a member's Foreign Service Retirement benefits or survivor benefits and awarding a portion of such benefits to an eligible beneficiary.

l. "Former spouse"[1] means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during periods of service by that participant which are creditable under section 671.5 provided the participant was making contributions to the Fund under section 671.4-1 during some portion of such service, and, except with respect section 673.5-2e, provided the divorce occurred after February 15, 1981. For this purpose, a former spouse shall not be considered as married to a participant for periods assumed to be creditable under section 672.3-1c in the case of a disability annuity or section 673.5-6b in the case of a death in service. A former spouse will be considered married to a participant for any extra period of creditable service provided under section 671.5-14 for service at an unhealthful post during which the former spouse resided with the participant. See section 676.7-3 for procedures to determine this extra period of marriage.

m. "Fund" means the Foreign Service Retirement and Disability Fund.

n. "Military and naval service" means honorable active service:

(1) In the Armed Forces of the United States;

(2) In the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(3) As a commissioned officer of the National Oceanic and Atmospheric Administration or predecessor organization after June 30, 1961.

However, this definition does not include service in the National Guard, except when ordered to active duty in the service of the United States.

o. "M/MED" means the Department's Office of Medical Services.

p. "Participant" means a person as described in section 671.3.

q. "PER/ER/RET" means the Department's Retirement Division in the Bureau of Personnel.

r. "Previous spouse" means any person formerly married to a principal, whether or not such person qualifies as a former spouse under paragraph l of this section.

s. "Principal" means a participant or former participant whose service forms the basis for a benefit under chapter 8 of the Act for a spouse, previous spouse, or child of a participant.

t. "Pro Rata Share" means, in the case of any former spouse of any participant or former participant, a percentage which is equal to the percentage that (1) the number of years and months during which the former spouse was married to the participant during the creditable service of that participant is of (2) the total number of years and months of such creditable service. When making this calculation, item (1) is adjusted in accordance with paragraph l of this section and both are adjusted under section 671.5-17. In the total period, 30 days constitutes a month and any period of less than 30 days is not counted.

u. "Spousal agreement" means any written agreement between a participant or former participant, and the participant's spouse or former spouse.

v. "Student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, university, or comparable recognized educational institution. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years, semester, or terms if the interim or other period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Retirement Division (PER/ER/RET) that the child has a bona fide intention of continuing to pursue such course during the school year, semester, or term immediately following the interim.

w. "Surviving spouse" means the surviving wife or husband of a participant or annuitant who, in the case of death in service or marriage after retirement, was married to the participant or annuitant for at least 1 year immediately preceding death or is the parent of a child born of the marriage.

x. "System" means the Foreign Service Retirement and Disability System.

671.3 Participants

The following persons are participants in the System:

a. Members of the Service serving under a career appointment or as a career candidate under section 306 of the Act (1) in the Senior Foreign Service, or (2) assigned to a salary class in the Foreign Service Schedule;

b. Any person not otherwise entitled to be a participant who has served as chief of mission or an ambassador at large for an aggregate period of 20 years or more, exclusive of extra service credit for service at unhealthful posts, and who has paid into the Fund a special contribution for each year of service;

c. Any individual who was appointed as a Binational Center Grantee and who completed, prior to February 15, 1981, at least 5 years of satisfactory service as a grantee, as determined by the Director of Personnel of USIA or under any other appointment under the Foreign Service Act of 1946, as amended, who has paid into the Fund a special contribution under section 671.4 for such service;

d. Members of the Service who transfer to a public international organization and make contributions to the Fund under the authority of subchapter IV, chapter 35, title 5, U.S. Code; and

e. Any person converted to the competitive service under section 2104 of the Act who elects to participate in the System under section 2106(b)(1) or (2) shall remain a participant so long as the person is employed in an agency which is authorized to utilize the Foreign Service personnel system.

NOTE.—If an employee who is a participant in the System is appointed by the President, either with or without the consent of the Senate, to a position in any agency of the U.S. Government, any U.S. delegation or mission to any international organization, any international commission, or in any international body, such an officer shall not, by virtue of acceptance to such an appointment, lose status as a participant in the System.

671.4 Contributions to Fund

671.4-1 Amount of Contributions

Each participant is required to contribute 7 percent of basic salary to the Fund. The contributions from salary, together with the matching contributions from the salary appropriation, are deposited by the agencies in the Treasury of the United States to the credit of the Fund.

671.4-2 Periods of Leave Without Pay and Military Service

Contributions may not be made for any periods of leave without pay except (a.) A participant who enters on approved leave without pay to serve as a full-time employee of an organization composed primarily of Government employees may, within 60 days after entering on that leave with pay, pursuant to section 671.5-6 file with the employing agency an election to receive full retirement credit for such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the salary rate that would be applicable if the participant were in a pay status. (b.) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member of office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All such periods of service for which full contributions are made are fully creditable (see section 671.5-16). (c.) A participant, who, while on approved leave without pay, serves under a PIT appointment shall be subject once again to have Foreign Service retirement contributions withheld from salary.

671.4-3 Special Contributions

a. A participant may elect to make a special contribution to obtain credit for prior service for which refunds (lump-sum payments) have been made (see section 671.5-9) or to avoid a reduction in the participant's annuity for failure to make the contribution as explained in section 673.3. A special contribution equals 5 percent of the individual's basic annual salary

for each year of service for which credit is sought from July 1, 1924 to October 16, 1960; 6-1/2 percent from October 17, 1960 to December 31, 1969; and 7 percent on and after January 1, 1970. Special contributions will include interest computed from the midpoint of the service in question, or from the date when the refund was paid, to the date of payment of the special contribution or commencing of annuity, whichever is earlier. Interest is compounded at the rate of 4 percent annually to December 31, 1976, and at 3 percent annually thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956.

b. A person who becomes a participant in this System by direct transfer without a break in service from another retirement system for Government civilian employees does not have to make a special contribution because contributions to the other fund will be transfered automatically, and full credit will be granted for all service for which contributions are so made. A person who becomes a participant in this System after a break in service under some other retirement system for Government civilian employees or after receiving a lump-sum payment under this or another retirement system may determine the amount of the special contribution owed by submitting Form OF-141, Application for Service Credit (Exhibit 671.4-3b) to the employing agency. Submission of this form will not obligate the participant to make the contribution but will assure that proper recognition is given in the annuity computation for all prior service.

c. Upon receipt of Form OF-141, the agency will obtain from the Office of Personnel Management, or other agency, if necessary, verification of all service claimed. The agency will then inform the participant in writing of the amount of the contribution required for the prior service.

d. A participant may elect to make a special contribution to cover all or a portion of prior civilian service. However, if purchase is elected for only a portion of prior service or if payment is not completed at the time annuity payment begins, the contribution that is made shall be applied first to the latest service completed prior to becoming a participant for which a refund (lump-sum payment) was made and then to the most recent service completed for which no retirement contributions were made. If annuity commences before a special contribution is fully paid, a participant or survivor may elect to have the net annuity (as defined in section 671.8-2b) offset against the amount owed to cover the balance of the special contribution provided the total amount owed can be collected from accrued annuity in 4 months or less. If the amount owed cannot be collected within 4 months, the balance of the special contribution must be paid in a lump-sum prior to the commencement of annuity payments, or the annuity will be computed without benefit of the unpaid contribution.

e. All remittances by personal check for this purpose shall be made payable to the participant's agency and shall be for U.S. dollars, payable at par, at a banking institution in the United States (checks drawn on foreign banking institutions are not acceptable). These remittances shall be forwarded to the participant's agency: Cashier Unit, and the transmittal letter, or memorandum subject: AFIN, Office of Finance, shall clearly indicate that the remittance is to purchase Foreign Service retirement credit and fully identify the person to be credited. Allotments of pay for this purpose shall be marked: "for deposit in the Foreign Service Retirement and Disability Fund for purchase of prior service credit for (name of participant to be credited)." (See 4 FAM 556 for allotments for this purpose.) The disbursing officer shall forward such allotment of pay to the appropriate agency finance office by memorandum subject: AFIN, Purchase of Service Credit for (name of person to be credited), Foreign Service Retirement and Disability Fund.

671.4-4 Automatic Transfer of Contributions from Another System

If an employee under some other Government retirement system becomes a participant in the Foreign Service Retirement and Disability System by direct transfer, such employee's total contributions and deposits, including interest accrued thereon, except voluntary contributions, are transferred to the Fund as of the date such employee becomes a participant. The transfer of such funds shall constitute a complete discharge and acquittance of all claims and demands against the retirement system on account of services rendered before becoming a participant in the System. No employee whose contributions are so transferred is required to make contributions in addition to those transferred for periods of service for which full contributions were made to the other Government retirement fund, nor is any refund made to any such employee on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by section 671.4-3a for contributions to this retirement Fund.

671.5 Creditable Service

671.5-1 General Policy

Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that PER/ER/RET determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined under section 8332 of title 5, United States Code), shall be creditable for purposes of Foreign Service Retirement. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under the same conditions and not counted under this section. Generally this means that all service in the executive, judicial, and legislative branches of the Federal Government, unless excluded by section 8332, title 5, U.S.C., are creditable for purposes of computing Foreign Service Retirement benefits. Service creditable under section 8332 of title 5 is described in section 675, Appendix A, subchapter S3.

671.5-2 Exclusion Based on Eligibility for Annuity Under Another System

No participant may obtain prior civilian service credit on the basis of which the participant is receiving or will in the future be entitled to receive any annuity under another retirement system covering civilian personnel of the Government or personnel of a public international organization. Participants may waive the other Government annuity and transfer the credit to this System if they wish such credit.

671.5-3 Option to Suspend or Waive Retired Military Pay

a. Credit for prior military service which forms the basis for military retired pay, except for certain types of retired pay, described in Federal Personnel Manual Supplement S3-5 (3 FAM 675 Appendix A), or a Veterans pension or compensation in lieu of retired pay, may not be credited toward eligibility for annuity nor computation of annuity under this chapter unless the military retired pay is waived. However, if a military retiree waives military retired pay and the military service is not needed to establish eligibility for an annuity, but is used only in computing the annuity, the military retiree may revoke the waiver upon reaching age 62, have the annuity reduced under section 671.5-4 and have the retired pay reinstated.

b. A participant who is in receipt of retired pay which bars credit for military service may elect to waive the right to future military retired pay and to have military service added to civilian service for the purpose of obtaining a greater benefit in the form of annuity under the System. The participant's waiver request, specifying the effective date of the waiver and social security number, should be forwarded directly to the Military Finance Center from which retired pay is received at least 60 days before the commencing date of annuity under the Act. The waiver should be worded in the following manner:

"I, (full name and military serial number), hereby waive my military retired pay, effective (date of retirement). I hereby authorize the Department of State to withhold from my Foreign Service retirement annuity any amount of military retired pay granted beyond the effective date of this waiver due to any delay in receiving or processing this election. I request that a copy of your acknowledgement be sent directly to:

Department of State
Retirement Division
Room 1251, Main State Building
Washington, D.C. 20520"

The retiring participant should attach to the application for retirement a copy of the letter to the Military Finance Center.

c. If the participant dies and received military retired pay under conditions whereby such participant could not have used the military service had the participant retired on the date of death, the military service cannot be used in determining the amount of the survivor annuity. A survivor annuitant cannot waive the military retired pay the participant was receiving on the date of death.

671.5-4 Exclusion Based on Eligibility for Social Security

Any participant, annuitant, or survivor becoming eligible, or upon proper application would be eligible, for a monthly old-age or survivor benefit under title II of the Social Security Act, based on Peace Corps, Vista, or military or naval service performed after December 31, 1976, will be ineligible to count this service as creditable service under this section. If this service is included in an initial computation, when the annuitant attains eligibility for the social security benefit, the annuity will be recomputed and this service excluded from the computation effective on the first of the month the annuitant becomes entitled to the social security benefit.

671.5-5 Periods of Absence

Credit is granted for all leave without pay, and for time on the rolls in a nonpay status; for example, leave without pay, suspension, furlough, and absence without leave which does not exceed 6 months in the aggregate in any calendar year (except when the entire period is creditable as provided in section 671.5-6, 671.5-8, and 671.5-16).

671.5-6 Employee Organization

a. Effective November 7, 1976, a participant who takes leave without pay (LWOP) to serve full-time in an employee organization composed primarily of Government employees will be required to pay into the Fund both the employee and employer retirement contribution (14 percent of basic salary) for all such service to obtain retirement credit or to make no deposit and forego all retirement credit for LWOP.

b. A participant may make a special contribution for any period of approved LWOP prior to November 7, 1976, while serving full-time in such an employee organization to obtain full retirement credit for such period of LWOP. If such contribution is not made, up to 6 months' credit shall be allowed for such LWOP each calendar year. Any such special contribution shall be based upon the suspended Foreign Service salary rate and shall be computed under section 671.4-3.

671.5-7 Japanese-American Employee Service

Full credit is allowed, without deposit, to certain Japanese-American employees while citizens of the United States or aliens lawfully admitted to the United States for periods of confinement in internment camps during World War II. Retirement credit is allowed only for that portion of the period of internment or detention occurring after the employee attained 18 years of age and for which credit has not already been allowed under Public Law 86-782, which granted special Civil Service pay and retirement benefits to those individuals of Japanese ancestry who had been interned and who were employed by the Federal Government as of July 15, 1952. For purposes of obtaining credit under this section, "World War II" means the period beginning December 7, 1941, and ending December 13, 1946.

671.5-8 Employees' Compensation

If a participant is receiving employee-compensation benefits under 5 U.S.C. 8101–8150, credit is given for the entire period if the participant is carried on the rolls of a Government agency in a leave without pay status. Also, full credit is allowed for all or the portion of the period of separation during which a former participant receives employee's compensation, provided the participant is later reemployed.

671.5-9 Breaks in Service

Separations of only 1, 2, or 3 calendar days are not deducted in computing total creditable service. No credit is allowed, however, for any period of separation which totals more than 3 calendar days.

671.5-10 Periods for Which Refunds Have Been Made

Creditable service for which retirement deductions have been refunded to a participant is included if a special contribution is made to the Fund. If special contribution is not

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made, this service is not included in length of service for annuity computation, but is included for all other purposes.

671.5-11 Service for Which Retirement Deductions Have Not Been Made

Even though retirement deductions were not made for a period of Government civilian service, credit generally may be given without special contribution to cover this service. If a special contribution is not made, however, the annuity is subject to reduction as explained in section 673.3.

671.5-12 Terminal Leave

A lump-sum payment covering accrued accumulated and restored annual leave is not considered pay for retirement purposes, and no credit is allowed for the period covered by the payment.

671.5-13 Fractional Part of a Month in Total Service

In computing a participant's total creditable service, the fractional part of a month in the aggregated service is eliminated. For example, a participant who has two periods of creditable service, one of 2 years, 6 months, and 20 days duration and the other 18 years, 3 months, and 15 days duration, is given credit for a total of 20 years and 10 months of service.

671.5-14 Service at Unhealthful Posts

a. The Allowances Staff (A/ALS) may from time to time establish a list of places which, by reason of climatic or other extreme conditions, are to be classified as unhealthful (see Exhibit 671.5-14a). A/ALS may at any time cancel the designation of any post on the unhealthful list, and such cancellation does not affect any credit accrued for service at such post before the cancellation date.

b. Chiefs of mission of Class I posts who are also participants in the Foreign Service Retirement and Disability System automatically receive extra service credit toward retirement for service at unhealthful posts. Other participants in the System who are assigned to unhealthful posts automatically receive post differential pay, if such is prescribed for the post, or they may elect to receive extra service credit toward retirement in lieu of post differential pay on Form OF-140, Election to Receive Extra Service Credit Towards Retirement (Exhibit 671.5-14b). Any such election filed on or after November 22, 1978, is irrevocable for the duration of the participant's assignment at the post. Except that whenever there is a change by the Department in benefits such as the removal of the pay cap or an increase or decrease in a post differential, a participant whose benefits are changed may revoke the election within 60 days of the benefit change. For this purpose, an assignment would be terminated by travel to the U.S. for home leave and return. Returning to the same post would constitute a new assignment thereby permitting a new election if desired.

c. Extra service credit is granted in an amount equal to one-half the time spent at an unhealthful post exclusive of time absent from the post on temporary duty, consultation, or detail at other locations not designated as unhealthful. In computing the extra service credit, count the total amount of time spent at an unhealthful post from the date of arrival, or from the date the election to receive extra credit becomes effective, *through* the date of final departure, including leaves of absence spent at the post or elsewhere and excluding temporary duty, detail, or consultation at a post not on the unhealthful list. Any fraction of a month appearing in the final total is counted as an entire month. This result is then divided by two and the answer represents the extra credit to which the participant is entitled. For example:

Post	Years	Months	Days
Addis Ababa	2	5	6
Bangkok	1	3	2
Bombay	0	6	1
Total	4	2	9
Count fractional month as whole month and divide by 2	4	3	0
Extra service credit allowed	2	1	15

d. A participant in the System may receive extra credit for service performed at an unhealthful post before becoming a participant, if (1) service was performed in an American Foreign Service personnel category or under a General Schedule appointment with a Foreign Affairs Agency, (2) the participant has made full contributions to the Fund for such period of service or a deduction made under section 673.3-1b, and (3) the person was ineligible to receive a salary differential while assigned to such post.

e. Extra credit for service at an unhealthful post is counted for the purpose of meeting the minimum length of service required for retirement eligibility, eligibility for survivor annuity under section 673.5 (but see restriction in section 671.7-3a applicable to former spouses), and eligibility to continue health and life insurance coverages into retirement, if all other requirements have been met. However, the extra credit for service at an unhealthful post cannot be added in computing the employee's "high-3" average salary.

671.5-15 Credit for Unused Sick Leave

The service of an employee who (1) retires on immediate annuity or (2) dies leaving a survivor entitled to survivor annuity is increased by the days of unused sick leave to the employee's credit. The days of unused sick leave thus added are used only in counting the number of years and months of service for annuity computation purposes; they cannot be added in computing the employee's high-3 average salary or for the purpose of meeting the minimum length of service required for retirement eligibility. However, unused sick leave may be credited without regard to the 35-year limitation mentioned in section 673.3-1. An immediate annuity is one which begins to accrue no later than 1 month after the employee is separated. A separated employee entitled to a deferred annuity beginning at age 60 is not entitled to retirement credit for unused sick leave if that individual attains age 60 more than 1 month after separation.

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671.5-16 Credit While on Approved LWOP to Serve as an Employee of Congress

A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress, shall continue to make contributions to the Fund based upon the Foreign Service Salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this section are considered creditable service for all purposes and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

671.5-17 Special Rules for Computing Creditable Service for Purposes of Payments to Former Spouses

For the purpose of determining the pro rata share of annuity, survivor annuity, or lump-sum payable to a former spouse, and only for this purpose, the following shall be considered creditable service:

a. The entire period of a principal's approved leave without pay during full-time service with an organization composed primarily of Government employees irrespective of whether the principal elects to make payments to the Fund for this service as described in section 671.5-6;

b. The entire period of Government service for which a principal received a refund of retirement contributions which the principal has not repaid unless the former spouse received under section 673.8 a portion of the (lump-sum) refund or unless a spousal agreement or court order provided that no portion of the refund be paid to the former spouse; and

c. All creditable service including service in excess of 35 years notwithstanding the limitation in section 673.3-1.

Extra credit earned for service at an unhealthful post is counted for this purpose provided the former spouse resided at the post. See section 671.7-3.

The period covered by the credit for unused sick leave under section 671.5-15 is not creditable for this purpose.

671.6 Sources of Moneys

The Fund is maintained by:

a. Deductions equal to seven percent of basic salary received by each participant and matching contributions from the employing agencies;

b. Special contributions from participants and transfers of contributions from other retirement systems under sections 671.4 and 673.3-1c;

c. Appropriations to the Fund authorized by section 821 of the Act to amortize certain unfunded liabilities of the System and to meet the portion of the Foreign Service normal cost not met by contributions under paragraphs a and b;

d. Payments into the Fund from the Treasury pursuant to section 822 of the Act equivalent to interest on the unfunded liability of the System and to defray the cost of free credit for military and naval service; and

e. Earnings of Fund investments under section 819 of the Act.

The Office of Budget and Planning (M/COMP/BP) with the advice of the Actuary in the Office of the Secretary of the Treasury determines the amount of appropriations and payments under paragraphs c and d.

671.7 Required Notifications to Department Respecting Spouses and Former Spouses

671.7-1 Notification from Participant or Annuitant

If a participant or former participant becomes divorced on or after February 15, 1981, the participant shall notify the Department (PER/ER/RET) of the divorce on or prior to its effective date. The notice shall include the effective date of the divorce; the full name, mailing address, and date of birth of the former spouse; the date of the member's marriage to that person; and an enclosed certified copy of the divorce decree. If there is a court order or spousal agreement concerning payment or nonpayment of Foreign Service benefits to the former spouse, the original or a certified copy of the order or agreement shall also be forwarded to PER/ER/RET. In the absence of a court order or spousal agreement providing otherwise, the Department will pay a pro rata share of the member's benefits to the former spouse as described in section 673.2-1. (A former spouse of a former participant who separated from the Service on or before February 15, 1981, is not eligible for a pension under section 673.2, that is, not eligible for a pro rata share of the principal's annuity.) Upon receipt of notice of a divorce, a court order, or spousal agreement, the Department will proceed as indicated in section 671.8 or 671.9. Delinquent notice to the Department of the divorce of an annuitant will result in retroactive payments to any qualified former spouse to the extent that the retroactive payments can be deducted from future annuity payments to the principal as stated in section 671.8-4.

671.7-2 Notification to Department From Former Spouse

A former spouse is obligated to notify the Department on a timely basis of the following:

a. A divorce from a participant or former participant when the former spouse is notified by the court of the divorce before the participant is notified;

b. Any change in address; and

c. Any remarriage.

Notices shall be sent to the Department of State, Attention PER/ER/RET, Washington, D.C. 20520.

671.7-3 Residence of Spouse During Service at Unhealthful Post

a. The calculation of the pro rata share of benefits for a former spouse, and the determination of whether a person qualifies as a "former spouse" depends on the length of the marriage. The latter, under the definition in the Act and when the principal has received extra service credit for an assignment to an unhealthful post, depends upon whether a spouse has resided with the principal at the unhealthful post. In order to determine residency for this purpose, whenever a married participant is assigned to an unhealthful post for which the participant **does not** receive post differential and **does** receive or request extra service credit pursuant to section 671.5-14, the participant shall report on Form OF-140, Elec-

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tion to Receive Extra Service Credit Towards Retirement, whether the participant's spouse is or is not residing at the post. Although a chief of mission is not required to submit Form OF-140 in order to receive extra credit for service at an unhealthful post, the chief of mission must nevertheless submit this form if the chief of mission has a spouse, to record the residence of own spouse. Both the participant and spouse shall sign the completed form. If there is a change in residence of the spouse during the assignment, a new Form OF-140 shall be filed to report the change.

b. Whenever a participant retires or becomes divorced, or whenever a former participant becomes divorced who has extra service credit for assignment at an unhealthful post completed prior to the issuance of this regulation and who was married during at least a portion of the assignment, the participant or former participant shall submit a statement to PER/ER/RET reporting on whether the participant's spouse resided at the unhealthful posts and the dates of such residence. The statement shall be signed by the principal and the principal's spouse or former spouse whenever possible.

c. In the event of a disagreement between a principal and principal's spouse or former spouse concerning residency at an unhealthful post, or the submission of a report or statement by a principal showing a period of nonresidence at a post by a spouse which is not signed by the spouse, the determination of residence will be made by PER/ER/RET based on records in the Department of payments for travel and allowances plus any other evidence that can be adduced. In the absence of any evidence to the contrary, the assumption will be made that the spouse resided at the post.

671.8 Court Orders and Divorce Decrees

671.8-1 Orders by a Court

a. A court may—

(1) Fix the amount of any pension to a former spouse under section 673.2, or order that none be paid;

(2) Fix the amount of any regular survivor annuity to a former spouse under paragraphs a and b of section 673.5-2, or order that none be paid;

(3) Order provision of an additional survivor annuity for a spouse or former spouse under section 673.4-5;

(4) Fix the amount of any benefit under section 673.4-7 based on recall service payable to a former spouse to whom the annuitant was married during any portion of the recall service, or order that none be paid;

(5) Fix the amount of any lump-sum payable to a former spouse under section 673.8, or order that none be paid;

(6) Order, to the extent consistent with any obligation stated in section 673.1-2 between a participant and a former spouse, and under any court decree of divorce, legal separation, or annulment or any court ordered or approved property settlement agreement incident to any court decree of divorce, legal separation, or annulment, that any payment from the Fund which would otherwise be made to a former participant based on that participant's service shall be paid (in whole or in part) by the Secretary of State to a spouse or previous spouse or child of such participant. No apportionment under this paragraph may be made of a payment authorized to be paid to a survivor of a participant or annuitant.

b. An order by a court that does not meet the definition of "court" in section 671.2(7) is not valid for purposes of this section even though a divorce decree issued by such court may be a basis for pro rata share payments to a former spouse as described in these regulations.

671.8-2 Qualifying Court Order

a. To be valid for purposes of this section, a court order must be found to be "qualified" by PER/ER/RET acting for the Secretary of State. A qualifying court order must—

(1) Be consistent with the terms of the Act and applicable regulations;

(2) Not direct payment of an amount in excess of the maximum amount authorized to be paid by the relevant regulation;

(3) Direct that payments be made to an eligible beneficiary from a principal's Foreign Service retirement benefit or survivor benefit. If a court directs or implies that a principal, rather than the Secretary of State or the Government, make the payments, the order will not be considered qualified unless the principal does not object during the 30-day notice period provided under section 671.8-6;

(4) Define the amount to be paid to a beneficiary in a way so that it can be readily calculated from information in the normal files of the Department;

(5) Not make payment contingent upon events other than those on which other payments from the Fund are based such as age, marital status, and school attendance, and

(6) Not be in conflict with any previously issued court order pertaining to another individual which remains valid.

b. No apportionment of annuity to a beneficiary under section 671.8-1a(1) or (6) shall exceed the net annuity of the principal. The net annuity is computed by excluding from the gross annuity the amounts which are:

(1) Owed by the individual to the United States;

(2) Deducted for health benefits premiums under section 8906 of title 5, United States Code;

(3) Deducted for life insurance premiums under the Government Life Insurance Program;

(4) Owed due to overpayment of annuity;

(5) Properly withheld for Federal income tax purposes, if amounts withheld are not greater than they would be if the individual claimed all dependents to which that individual was entitled.

671.8-3 Application for Payment

a. To receive payment from the Fund pursuant to a court award, the beneficiary must submit an application in writing to the Chief of the Retirement Division (PER/ER/RET), Department of State, Washington, D.C. 20520. The application must be typed or printed, signed by the beneficiary, and include:

(1) The full name, date of birth, current address, and current marital status of the beneficiary;

(2) Full name and date of birth of the participant or former participant and/or other identifying information;

(3) Relationship to the beneficiary, and if a spouse or former spouse, date of marriage to and/or divorce from the participant; and

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(4) A statement that the court order has not been amended, superseded, or set aside.

The original of the court order or a recently certified copy must be enclosed with the application, or a statement appended that such a copy has been sent to the Department by other means.

b. When payments are subject to termination upon the occurrence of a condition subsequent, such as marriage, remarriage, or termination of schooling, or death of the principal, no payment will be made until the beneficiary submits a statement to PER/ER/RET that:

(1) The condition has not occurred;

(2) The beneficiary will notify the Department (PER/ER/RET) within 15 calendar days of the occurrence of the condition subsequent; and

(3) The beneficiary will be personally liable for any overpayment to self resulting from the occurrence of the condition subsequent. PER/ER/RET may require periodic recertification of these statements.

671.8-4 Date of Court Orders

a. A court order directing or barring payment of a pension to a former spouse under section 673.2 may not be given effect by the Department if it is issued more than 12 months after the divorce becomes final. A court order adjusting the amount of a regular or additional survivor annuity to a former spouse under sections 673.5-2 or 673.4-5 may not be given effect by the Department if it is issued after the death of the principal.

b. A court order, issued within 12 months after a divorce becomes final, directing payment of a pension to a former spouse in an amount other than provided in section 673.2 may be made retroactively effective to the first of the month in which the divorce becomes final if so specified by the court. In such event, the Department will adjust any future payments that may become due to an annuitant and a former spouse by increasing one and correspondingly reducing the other to give effect to the order of the court. However, if future payments to one party are not due, as for example if a court orders that no payments be made to a former spouse, or that 100 percent of an annuity be paid as pension to a former spouse, the Department cannot give retroactive effect to a court order by collecting overpayments from one party to pay them to the other party and cannot make overpayments from the Fund.

c. A court order under this chapter involving any payment other than a pension to a former spouse under section 673.2 may not be given retroactive effect and shall not be effective until it is determined to be a qualifying order under section 671.8-5.

671.8-5 Preliminary Review

a. Upon receipt of an application for payment under section 671.8-3, PER/ER/RET will determine whether—

(1) The application is complete;

(2) The applicant is an eligible beneficiary under this chapter; and

(3) The court order is a qualifying order.

If the application is complete, the beneficiary is eligible, and the court order appears on its face to be a qualifying order, PER/ER/RET will provide the notification required by section 671.8-6. Otherwise, it will notify the applicant of any deficiency or requirement for additional information, and if the order is determined to be non-qualifying, PER/ER/RET will notify the applicant of the basis for such determination.

b. Upon receipt of a certified copy of final decree of divorce, PER/ER/RET will determine whether—

(1) It is a valid decree. Any judicial decree recognized as valid by the parties will be considered valid for this purpose. In addition, any non-recognized decree will be considered valid for this purpose unless:

(a) Neither party was domiciled within the court's jurisdiction; and

(b) The party denying recognition did not participate in the proceedings; or

(c) The party denying recognition was not afforded notice of the proceedings (actual or constructive);

(2) A related court order has been submitted by either party; and

(3) A pro rata share payment is or may become due the former spouse.

If a divorce decree is deemed valid under this paragraph, a pro rata share payment is due a former spouse unless PER/ER/RET is in receipt of a court order which it has deemed qualified under paragraph a, or a valid spousal agreement providing otherwise. If PER/ER/RET determines that a pro rata share payment is due, it will provide the notification required by section 671.8-6. Otherwise, unless action is being taken pursuant to a related court order, it will notify both parties to the divorce the reason a pro rata share payment is not payable.

671.8-6 Notification

a. Notification to a Principal

Whenever PER/ER/RET receives from a former spouse or other eligible beneficiary—

(1) A court order which it deems qualified that requires payment to the beneficiary; or

(2) A final decree of divorce which it deems valid together with a request for a pro rata share payment, PER/ER/RET will send a copy of the document to the principal and a notice stating:

(a) That PER/ER/RET deems the order qualified or the divorce decree valid;

(b) That payments will be made from the principal's account to the beneficiary and the effective date of such payments; and

(c) The effect of such payments on the principal's retirement benefit.

In the case of any court order with retroactive or immediate effect, and in the case of pro rata share payments, the amounts will be withheld from future payments to the principal but will not be paid to the beneficiary for 30 days from the notice date in order to give the principal an opportunity to contest the court order or the validity of the divorce.

PER/ER/RET will provide the former spouse or other beneficiary the same information, stating the exact amount that will be payable to the beneficiary and explaining how that amount was calculated.

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b. Notification to a Former Spouse

When PER/ER/RET receives from a principal a court order which it deems qualified that requires or forbids payment to a former spouse or a final decree of divorce which it deems valid without an accompanying court order, PER/ER/RET will send a copy of the document to the former spouse and notice stating:

(1) That PER/ER/RET deems the court order qualified or the divorce decree valid;

(2) That PER/ER/RET intends to honor the court decree or to make pro rata share payments because of the divorce; and

(3) The effective date, exact amount, and method of calculation of any payments to the former spouse.

PER/ER RET will provide the same information to the principal and will explain the effect any payment to a former spouse will have on the principal's retirement benefit.

671.8-7 Decision

a. When a response has not been received by PER/ER/RET from a principal within the 30-day period under section 671.8-6a, payment will be made in accordance with the notification. When a response is received, the Chief, PER/ER/RET will consider the response. If it is shown that a court order is not qualifying or that a divorce is not valid under terms of the Act and these regulations, payment proposed in the notification will not be made. In such a case, PER/ER/RET will advise both parties of the basis for its decision and the alternative action, if any, that it proposes to take.

b. If a principal responding to a notification under section 671.8-6a objects to the payment or other action proposed by the Department in the notification based on the validity of the court order or divorce decree, and the record contains support for the objection, PER/ER/RET will grant the principal 30 days to initiate formal legal action to determine the validity of the objection, will continue to delay payment to the former spouse or other beneficiary during this period, and will notify the beneficiary of this action. If evidence is submitted that formal legal action has been started within the 30-day period, the amount of any proposed payment to a former spouse or other beneficiary will continue to be withheld from any payments due the principal, but no payment will be made to the former spouse or other beneficiary until a judicial decision is rendered or agreement reached between the parties.

671.8-8 Allotment to Beneficiary

If a court order is not a qualifying court order because it directs or implies that payment to the beneficiary is to be made by the principal rather than the Secretary of State, the principal may make an allotment to the beneficiary from the principal's own annuity. An annuitant may also make an allotment from own annuity to a previous spouse in the absence of a court order.

671.8-9 Limitations

a. Retirement benefits are subject to apportionment by court order under section 671.8-1(6) only while the principal is living. Payment of apportioned amounts will be made only to a previous spouse and/or the children of the principal. Such payments will not be made to any of the following:

(1) Heirs or legatees of the previous spouse;

(2) Creditors of either the principal or the previous spouse; or

(3) Assignees of either the principal or the previous spouse.

b. The amount of any court ordered payment may not be less than one dollar and, in the absence of compelling circumstances, shall be in whole dollars.

c. In honoring and complying with a court order, the Department shall not be required to disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payments, despite the existence of any special schedule relating to a previous spouse or other beneficiary.

d. In cases where the court order apportions a percentage of the retirement benefits, PER/ER/RET will initially determine the amount of proper payment. That amount will only be increased by future cost-of-living increases unless the court directs otherwise.

671.8-10 Liability

a. The Department shall not be liable for any payment made from retirement benefits pursuant to a court order if such payment is made under the provisions of this chapter.

b. In the event that the Secretary is served with court orders concerning more than one beneficiary for the same retirement benefits, the benefits shall be available to satisfy the court orders on a first-come, first-served basis.

c. A previous spouse or other beneficiary may request that an amount be withheld from the retirement benefits of a principal or survivor of a principal which is less than the amount stipulated in a court order, or otherwise scheduled to be paid to the beneficiary under this chapter. This lower amount will be deemed a complete fulfillment of the obligation of the Department for the period in which the request is in effect. See section 672.7.

671.9 Spousal Agreements

671.9-1 Purpose

A spousal agreement may be used by both parties to establish an agreed-upon level of benefits to a spouse or a former spouse and to relieve the participant of responsibility for providing a higher level of benefits.

671.9-2 Agreement With Spouse

a. A spousal agreement between a participant and a spouse may waive or fix the level of a regular survivor annuity under section 673.5-3. If an agreement is filed, it will assure the spouse that the agreed level of survivor annuity will be paid, irrespective of a future divorce provided the survivor meets the definition of "former spouse" in section 671.2(l) unless the court in the divorce orders otherwise. If an agreement is not filed, the participant's annuity will be reduced under section 673.4-2 to provide the maximum regular survivor annuity for the spouse, but in the event of a future divorce if the spouse meets the definition of "former spouse," that person will be entitled only to a pro rata share of the survivor annuity. An agreement under this paragraph may be filed with PER/ER/RET at any time prior to retirement (commencement of the principal's annuity). (See section 673.5-2b.)

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b. A spousal agreement between an annuitant and a spouse filed with PER/ER/RET before commencement of a supplemental annuity for recall service may waive a supplemental survivor annuity that would otherwise be provided for a spouse under section 673.4-7.

c. A spousal agreement between a participant or former participant and a spouse may be filed with PER/ER/RET at any time under section 673.4-5 and provide for an additional survivor annuity for the spouse.

d. A spousal agreement filed under paragraph a, b, or c remains valid and binding in the event of divorce if the spouse qualifies as a former spouse unless the court in the divorce orders otherwise.

671.9-3 Agreement With Former Spouse

a. A spousal agreement between a participant or former participant and a former spouse may waive, reduce, or increase the following benefits for a former spouse:

(1) A pension under section 673.2;

(2) A regular survivor annuity under section 673.5-2;

(3) A supplemental survivor annuity under section 673.4-7a(5);

(4) A lump-sum payment for regular or recall service under section 673.8.

A spousal agreement shall also be used by a participant or former participant who has a former spouse on February 15, 1981, wishing to elect a regular survivor annuity for such former spouse under section 673.5-2e. An agreement to establish or increase any benefit for a former spouse entered in to while the principal is married to someone else, must be signed and agreed by both the spouse and the former spouse. An agreement affecting pension benefits may be filed at any time and will govern payments made after its acceptance by PER/ER/RET. An agreement affecting a regular survivor annuity must be filed before the end of the 12-month period after the divorce involving that former spouse or at the time of retirement, whichever occurs first, except as authorized in section 673.5-2b for persons retired on February 15, 1981, or in section 673.5-2e for persons who were former spouses on February 15, 1981. This filing requirement stated in the Act makes it impossible to adjust, other than by court order, a regular survivor annuity for a former spouse when the divorce occurs after a retirement which occurs on or after February 15, 1981. The survivor annuity for the former spouse in such case is fixed by any spousal agreement entered into before the divorce, by section 673.5-2 or by court order. An agreement affecting supplemental survivor benefits or lump-sum payments must be filed before the supplemental annuity of the principal begins or lump-sum payment is made.

b. A spousal agreement between a participant or former participant and a former spouse may be filed with PER/ER/RET at any time under section 673.4-5 to provide an additional survivor annuity for the former spouse.

671.9-4 Form of Agreement

a. A spousal agreement is any legal agreement between the parties accepted by PER/ER/RET as meeting the requirements of this section. If the agreement is in accordance with the regulations, PER/ER/RET will accept as a valid spousal agreement a property settlement agreed to by the parties and approved by a court regardless of the date of the agreement.

b. A spousal agreement must either be authenticated by a court or notarized.

671.9-5 Limitations

a. A spousal agreement may not provide for any payment from the Fund in excess of the amount otherwise authorized to be paid, or at a time not authorized by these regulations, or to a person other than a spouse or former spouse.

b. A spousal agreement must be filed with the Department, Attention PER/ER/RET, and accepted by that office as in conformance with the Act and these regulations before the times specified in section 671.9-2 and 671.9-3. That office will provide advice to the parties on the validity of any proposed agreement and on proper format.

c. A spousal agreement may apply only to payments from the Fund for periods after receipt of a valid agreement by the Department.

d. Parts b, c, and d of section 671.8-9 and section 671.8-10 apply to spousal agreements and payments made pursuant to spousal agreements to the same extent that they apply to court orders and court ordered payments.

671.9-6 Duration and Precedence of Spousal Agreements

a. A spousal agreement may be revised or voided by agreement of the parties (by filing a new agreement under this section) at any time prior to the last day for filing an agreement determined under section 671.9-2 or 671.9-3, except spousal agreements for additional survivor annuities are irrevocable. After the last day for filing a particular agreement, such agreement is irrevocable.

b. A valid spousal agreement entered into subsequent to the issuance of a court order affecting the same parties will override the court order, and shall govern payments from the Fund.

c. A spousal agreement may not override a previous spousal agreement involving the same principal but a different spouse or former spouse without agreement of such spouse or former spouse.

671.10 Annual Notification of Rights

The Chief of PER/ER/RET shall, at least annually, take all reasonable steps to notify all participants and former participants, and spouses and former spouses of participants and former participants of their rights and obligations under the Act and these regulations as required by section 806(k) of the Act.

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List of Unhealthful Posts

(TL:PER-29 5-8-85)

Place	Effective Date of Designation	Effective Date of Canceled Designation
Abidjan, Ivory Coast	01/01/1942	
Abu Dhabi, United Arab Emirates	03/18/1974	09/16/1948
Acapulco, Mexico	01/01/1900	
Accra, Ghana	01/01/1942	
Addis Ababa, Ethiopia	01/01/1942	
Aden, Yemen (Aden)	01/01/1900	
Alexandria, Egypt	04/01/1977	
Algiers, Algeria	06/21/1974	
Alvaro Obregon, Mexico	01/01/1900	09/16/1948
Amman, Jordan	01/01/1942	
Amoy, China	01/01/1900	09/16/1948
Angeles, Philippines	06/21/1974	
Antananarivo, Madagascar	01/01/1900	05/18/1965
(Date of redesignation)	09/23/1975	
Antilla, Cuba	01/01/1900	
Arusha, Tanzania	09/23/1974	
Asmara, Ethiopia	09/23/1974	
Asuncion, Paraguay	01/01/1900	08/09/1960
(Date of redesignation)	03/18/1974	
(Date of redesignation)	01/01/1980	
Baghdad, Iraq	01/01/1900	
Baguio, Philippines	04/01/1978	
Bahia (see Salvador da Bahia)		
Bamako, Mali	12/20/1960	
Bandar Seri Begawan, Brunei	*05/01/1985*	
Bandung, Indonesia	06/21/1974	
Bangkok, Thailand	01/01/1900	
Bangui, Central African Empire	12/20/1960	
Ban Honei Sai, Laos	06/21/1974	
Banjul, The Gambia	01/01/1966	
Barranquilla, Colombia	01/01/1900	06/01/1954
(Date of redesignation)	08/01/1977	
Basra, Iraq	01/01/1942	
Batavia (see Jakarta)		
Bathurst (see Banjul)		
Beijing (formerly Peking), China	03/01/1977	
Beira, Mozambique	01/01/1942	
Beirut, Lebanon	06/01/1980	
Belem, Brazil	01/01/1900	
Belize (see Belize City)		
Belize City, Belize (formerly		
Belize, British Honduras)	01/01/1900	07/05/1957
(Date of redesignation)	09/23/1974	
Benin City, Nigeria	06/21/1974	
Bhairawa, Nepal	06/21/1974	
Bissau, Guinea-Bissau	01/01/1979	
Blantyre, Malawi	11/10/1966	
Bluefields, Nicaragua	01/01/1900	09/16/1948
Bogor, Indonesia	06/21/1974	
Bogota, Colombia	01/01/1942	06/01/1954
Boma, Zaire (formerly Belgian Congo)	01/01/1900	09/16/1948
Bombay, India	01/01/1900	
Brazzaville, Republic of Congo	01/01/1942	
Buenaventura, Colombia	01/01/1900	
Bujumbura, Burundi	02/15/1966	
Bukavu, Zaire	06/21/1974	
Butuan City, Philippines	10/01/1976	
Caibarien, Cuba	01/01/1900	09/16/1948
Cairo, Egypt	09/23/1974	
Calcutta, India	01/01/1900	
Camaguey, Cuba	01/01/1942	08/09/1960
Camp O'Donnell, Philippines	06/21/1974	
Canton (see Guangzhou)		
Caripito, Venezuela	01/01/1942	
Cartagena, Colombia	01/01/1900	
Cayenne, French Guiana	01/01/1942	

List of Unhealthful Posts (Continued)

Place	*Effective Date of Designation*	*Effective Date of Canceled Designation*
Cebu, Philippines	01/01/1942	
Ceiba (see La Ceiba)		
Changsha, China	01/01/1900	
Chengtu, China	01/01/1942	
Chiang Mai, Thailand	01/01/1942	
Chungking, China	01/01/1900	
Cienfuegos, Cuba	01/01/1900	09/16/1948
Ciudad Bolivar, Venezuela	01/01/1942	
Ciudad Trujillo (see Santo Domingo)		
Coatzacoalcos, Mexico	01/01/1942	
Cochabamba, Bolivia	06/21/1974	
Colombo, Sri Lanka (formerly Ceylon)	01/01/1900	
Conakry, Guinea	08/09/1960	
Corinto, Nicaragua	01/01/1900	09/16/1948
Corumba, Brazil	01/01/1942	
Cotonou, Benin (formerly Dahomey)	12/20/1960	
Cucuta, Colombia	01/01/1942	
Cuzco, Peru	06/21/1974	
Dacca (see Dhaka)		
Dakar, Senegal	01/01/1900	
Damascus, Syria	05/01/1980	08/01/1980
(Date of redesignation)	03/01/1982	
Dar es Salaam, Tanzania	01/01/1942	
Davao, Philippines	01/01/1942	
Dhahran, Saudi Arabia	01/01/1942	
Dhaka (formerly Dacca), Bangladesh (formerly Pakistan)	01/01/1942	
Djakarta (see Jakarta)		
Djibouti, Republic of Djibouti	01/01/1978	
Dodoma, Tanzania	05/01/1976	
Doha, Qatar	06/21/1974	
Douala, Cameroon	06/21/1974	
Dubai, United Arab Emirates	12/01/1976	
Enugu, Nigeria	06/21/1974	
Florianopolis, Brazil	01/01/1942	07/03/1958
Foochow, China	01/01/1900	09/16/1948
Fortaleza, Brazil	01/01/1942	05/18/1965
(Date of redesignation)	06/21/1974	
Fort-Lamy (see N'Djamena)		
Freetown, Sierra Leone	08/09/1960	
Frontera (see Alvaro Obregon)		
Garissa, Kenya	06/01/1978	
Gbarnga/Suakoko, Liberia	10/01/1977	
Georgetown, Guyana	01/01/1900	
Godawari, Nepal	05/01/1979	
Godthaab, Greenland	01/01/1942	
Gondar, Ethiopia	06/21/1974	
Grenada	*03/01/1985*	
Guadeloupe, French West Indies	01/01/1942	
Guangzhou (formerly Canton), China	01/01/1900	
Guayaquil, Ecuador	01/01/1900	
Guaymas, Mexico	01/01/1900	06/01/1954
Havana, Cuba	01/01/1900	09/16/1948
(Date of redesignation)	11/04/1979	
Hankow, China	01/01/1900	
Hanoi, Vietnam	01/01/1942	
Hargeisa, Somalia	02/14/1966	
Hitaura, Nepal	06/21/1974	
Hong Kong	01/01/1900	06/01/1954
Hue, Vietnam	01/01/1942	
Iba, Philippines	06/21/1974	

List of Unhealthful Posts (Continued)

Place	*Effective Date of Designation*	*Effective Date of Canceled Designation*
Ibadan, Nigeria	06/21/1974	
Ife, Nigeria	06/21/1974	
Ikeja-Agege, Nigeria	06/21/1974	
Iloilo, Philippines	01/01/1942	
Iquique, Chile	01/01/1942	
Iquitos, Peru	01/01/1942	
Isfahan, Iran	01/01/1942	07/01/1977
Iskenderun, Turkey	01/01/1942	07/3/1958
Islamabad, Pakistan	03/18/1974	
Jakarta, Indonesia	01/01/1900	
Jeddah, Saudi Arabia	01/01/1942	
Kabul, Afghanistan	01/01/1942	
Kaduna, Nigeria	08/09/1960	
Kampala, Uganda	01/01/1942	
Kandahar, Afghanistan	06/21/1974	
Kano, Nigeria	05/21/1975	
Karachi, Pakistan	01/01/1900	
Kathmandu, Nepal	08/09/1960	
Khartoum, Sudan	01/01/1942	
Khon Kaen, Thailand	06/21/1974	
Khorramshahr, Iran	01/01/1942	
Kibaha, Tanzania	09/01/1977	
Kibaya, Tanzania	04/01/1977	
Kiev, U.S.S.R.	04/01/1978	
Kigali, Rwanda	08/19/1962	
Kilosa, Tanzania	06/21/1974	
Kinshasa, Zaire (formerly Democratic Republic of the Congo)	01/01/1900	
Kirkuk, Iraq	01/01/1942	
Kisangani, Zaire	06/21/1974	
Kisumu, Kenya	06/21/1974	
Kitale, Kenya	06/21/1974	
Korat, Thailand	06/21/1974	
Krakow, Poland	12/01/1983	
Kuala Lumpur, Malaysia	01/01/1942	06/19/1954
Kumasi, Ghana	08/01/1979	
Kunming, China	01/01/1942	
Kuwait, Kuwait	01/01/1942	
Kwangju, Korea	07/01/1980	
Kweilin, China	01/01/1942	
La Ceiba, Honduras	01/01/1900	
Lagos, Nigeria	01/01/1900	
La Guaira, Venezuela	01/01/1900	
Lahore, Pakistan	01/01/1942	
Lampang, Thailand	06/21/1974	
Lanchow, China	01/01/1942	
La Paz, Bolivia	01/01/1900	
La Paz (Baja California), Mexico	01/01/1942	
Lashkar Gah, Afghanistan	06/21/1974	
Legaspi, Philippines	01/01/1942	
Leningrad, U.S.S.R.	04/01/1978	
Leopoldville (see Kinshasa)		
Libreville, Gabon	12/20/1960	
Lilongwe, Malawi	03/14/1976	
Lipa City, Philippines	06/21/1974	
Lome, Togo	08/09/1960	
Long Thien, Laos	06/21/1974	
Los Banos, Philippines	06/21/1974	
Lourenco Marques (see Maputo)		
Luanda, Angola	01/01/1900	
Luang Prabang, Laos	06/21/1974	
Lubumbashi, Zaire	06/21/1974	
Lusaka, Zambia	06/21/1974	
Lyallpur, Pakistan	06/21/1974	

List of Unhealthful Posts (Continued)

Place	*Effective Date of Designation*	*Effective Date of Canceled Designation*
Madras, India	01/01/1900	
Makthar, Tunisia	04/01/1977	
Malabo, Equatorial Guinea	06/21/1974	
Managua, Nicaragua	01/01/1900	
Manama, Bahrain	05/01/1976	
Manaus, Brazil	01/01/1900	09/16/1948
Mandalay, Burma	10/11/1960	
Manila, Philippines	01/01/1942	05/27/1965
(Date of redesignation)	06/21/1974	
Manta, Ecuador	01/01/1942	
Manzanillo, Cuba	01/01/1900	
Manzanillo, Mexico	01/01/1900	09/16/1948
Maputo, Mozambique	01/01/1900	09/16/1948
(Date of redesignation)	07/01/1979	
Maracaibo, Venezuela	01/01/1900	06/01/1954
(Date of redesignation)	01/01/1979	
Marawi City, Philippines	06/21/1974	
Martinique, French West Indies	01/01/1900	
Masqat (see Muscat)		
Matanzas, Cuba	01/01/1900	09/16/1948
Mazar-I-Sharif, Afghanistan	06/21/1974	
Mazatlan, Mexico	01/01/1900	08/09/1960
Medan, Indonesia	01/01/1900	09/16/1948
(Date of redesignation)	09/12/1949	
Merida, Mexico	01/01/1900	
Mersin, Turkey	01/01/1900	
Meru, Kenya	06/21/1974	
Meshed, Iran	01/01/1942	
Mexico City, Mexico	*07/01/1984*	
Mogadiscio (see Mogadishu)		
Mogadishu (formerly Mogadiscio), Somalia	01/01/1942	
Mombasa, Kenya	01/01/1900	
Monrovia, Liberia	01/01/1900	
Morogoro, Tanzania	06/21/1974	
Moscow, U.S.S.R.	12/01/1976	
Mpwapwa, Tanzania	06/21/1974	
Munoz, Philippines	06/21/1974	
Murree, Pakistan	10/11/1960	
Muscat, Oman	01/01/1900	09/16/1948
(Date of redesignation)	01/21/1974	
Naga City, Philippines	06/21/1974	
Nanking, China	01/01/1900	
Natal, Brazil	01/01/1942	05/18/1965
N'Djamena, Chad	12/20/1960	
New Delhi, India	01/01/1942	
Niamey, Niger	12/20/1960	
Nouakchott, Mauritania	02/14/1966	
Noumea, New Caledonia	01/01/1942	
Nuevitas, Cuba	01/01/1900	09/16/1948
Nyegezi, Tanzania	09/01/1982	
Ouagadougou, Burkina (formerly Upper Volta)	*12/20/1960*	
Pakse, Laos	06/21/1974	
Para (see Belem)		
Paramaribo, Suriname	01/01/1942	
Peking (see Beijing)		
Penang, Malaysia	01/01/1900	09/16/1948
Pernambuco (see Recife)		
Peshawar, Pakistan	08/09/1960	
Petrolina, Brazil	05/21/1975	
Phnom Penh, Democratic Kampuchea (formerly Khmer Republic)	01/01/1942	
Port-au-Prince, Haiti	01/01/1942	
Port Harcourt, Nigeria	06/21/1974	
Port Limon, Costa Rica	01/01/1900	09/16/1948
Port Moresby, Papua New Guinea	06/21/1974	

List of Unhealthful Posts (Continued)

Place	*Effective Date of Designation*	*Effective Date of Canceled Designation*
Port of Spain, Trinidad and Tobago	05/01/1983	
Port Said, Egypt	06/21/1974	
Poznan, Poland	12/01/1983	
Praia, Cape Verde	04/01/1979	
Progreso, Mexico	01/01/1900	09/16/1948
Puerto Barrios, Guatemala	01/01/1900	09/16/1948
Puerto Cabello, Venezuela	01/01/1900	09/16/1948
Puerto Cabezas, Nicaragua	01/01/1942	
Puerto Castilla, Honduras	01/01/1900	09/16/1948
Puerto Cortes, Honduras	01/01/1900	
Puerto la Cruz, Venezuela	01/01/1942	
Puerto Plata, Dominican Republic	01/01/1900	09/16/1948
Puntarenas, Costa Rica	01/01/1942	
Pusan, Korea	01/01/1942	
Quetta, Pakistan	*02/01/1985*	
Quezaltenango, Guatemala	05/01/1979	
Quito, Ecuador	01/01/1942	
Rampur, Nepal	06/21/1974	
Rangoon, Burma	01/01/1900	
Recife, Brazil	01/01/1900	06/01/1954
(Date of redesignation)	06/21/1974	
Rio Hacha, Colombia	01/01/1942	
Riyadh, Saudi Arabia	08/01/1983	
Roxas City, Philippines		05/21/1975
Sagua la Grande, Cuba	01/01/1900	
Saigon, Vietnam	01/01/1900	
Saipan, Trust Territory of the Pacific Islands	10/01/1980	
Salina Cruz, Mexico	01/01/1900	09/16/1948
Salvador da Bahia, Brazil	*01/01/1900*	*06/01/1954*
(Date of redesignation)	*11/01/1984*	
Samsun, Turkey	01/01/1942	08/09/1960
Sanaa, Yemen Arab Republic	11/10/1966	
Sandakan, British North Borneo	01/01/1900	09/16/1948
San Fernando, La Union Philippines	06/21/1974	
San Pedro Sula, Honduras	01/01/1942	
San Salvador, El Salvador	01/01/1981	
Santa Cruz, Bolivia	07/01/1976	
Santa Isabel (see Malabo)		
Santa Marta, Colombia	01/01/1900	09/16/1948
Santa Rosalia, Mexico	01/01/1900	09/16/1948
Santiago de Cuba, Cuba	01/01/1900	06/01/1954
Santo Domingo, Dominican Republic	01/01/1900	
(Date of redesignation)	06/21/1974	
Sao Vicente, Republic of Cape Verde	01/01/1942	
Savannakhet, Laos	06/21/1974	
Sayabourg, Laos	06/21/1974	
Seoul, Korea	01/01/1942	02/01/1979
Serere, Uganda	06/21/1974	
Shanghai, China	01/01/1900	
Shenyang,China	6/1/1985	
Sian, China	01/01/1942	
Singapore, Singapore	01/01/1900	06/01/1954
Songkhla, Thailand	06/21/1974	
Suez, Egypt	01/01/1942	
Surabaya, Indonesia	01/01/1900	09/16/1948
(Date of redesignation)	02/15/1950	
Suva, Fiji	01/01/1942	
Swatow, China	01/01/1900	09/16/1948
Tabriz, Iran	01/01/1942	07/01/1978
Taegu, Korea	06/21/1974	
Taichung, Taiwan, China	01/01/1942	05/27/1965
Taihoku (see Taipei)		
Taipei, Taiwan	01/01/1900	05/27/1965
Taiwan (city) (see Taipei)		

List of Unhealthful Posts (Continued)

Place	*Effective Date of Designation*	*Effective Date of Canceled Designation*
Taiz, Yemen Arab Republic	08/09/1960	
Tamale, Ghana	06/21/1974	
Tampico, Mexico	01/01/1900	
Tananarive (see Antananarivo)		
Tanga, Tanzania	06/21/1974	
Tapachula, Mexico	01/01/1942	
Tarlac, Philippines	06/21/1974	
Tegucigalpa, Honduras	01/01/1942	06/01/1954
(Date of redesignation)	06/26/1960	09/25/1967
(Date of redesignation)	04/08/1970	
Tehran, Iran	01/01/1942	04/25/1963
Tela, Honduras	01/01/1900	
Tihwa, China	01/01/1942	
Timang, Philippines	06/21/1974	
Tripoli, Libya	06/01/1976	
Tuguegarao, Philippines	01/01/1942	
Tuxtla Gutierrez, Mexico	*07/01/1984*	
Udorn, Thailand	09/23/1974	
Ukiriguru, Tanzania	06/21/1974	
Ujung Pandang, Indonesia	04/06/1977	
Veracruz, Mexico	01/01/1900	
Victoria, Seychelles	09/01/1978	
Vientiane, Laos	01/01/1942	
Vietnam, all posts except as otherwise listed	06/21/1974	
Vitoria, Brazil	01/01/1942	06/01/1954
Vladivostok, U.S.S.R.	01/01/1942	
Wajir, Kenya	11/18/1975	
Yaounde, Cameroon	05/18/1957	
Zanzibar, Tanzania	01/01/1900	
Zaria-Samaru, Nigeria	06/21/1974	
Ziguinchor, Senegal	06/21/1974	

ELECTION TO RECEIVE EXTRA SERVICE CREDIT TOWARDS RETIREMENT AND REPORT OF RESIDENCE OF SPOUSE

(Section 817 of the Foreign Service Act of 1980)

This form is to be completed only if post of assignment is classified as unhealthful and is listed in 3 FAM. This election may be made by a participant wishing to receive extra service credit towards retirement in lieu of post differential. Any such election filed after November 22, 1978, is irrevocable for the duration of the participant's assignment at the post. Except that whenever there is a change by the Government in benefits such as the removal of the pay cap or an increase or decrease in a post differential, a participant whose benefits are changed, may revoke the election or again elect within 60 days of the benefit change. For this purpose, an assignment would be terminated by travel to the U.S. for home leave and return. Returning to same post would constitute a new assignment thereby permitting a new election if desired. EFFECTIVE DATE: a) Date of arrival at post if completed upon initial arrival at post, or b) First day of the pay period following the date the election is made or changed. See additional instructions and Privacy Act Statement on reverse.

1. NAME (Last, First, Middle)	a. DATE OF BIRTH	b. SOCIAL SECURITY NO.	c. EMPLOYED BY
	d. DATE OF THIS ELECTION	e. POST	

2. ☐ I hereby elect to receive extra credit towards retirement under the Foreign Service Retirement and Disability System for the duration of my assignment to the above post in accordance with the provisions of 3 FAM. I understand that this election is in lieu of the post differential for this post and that such election will remain in effect until designation of the post as unhealthful is canceled.

a. DATE OF ARRIVAL AT THE POST INDICATED ABOVE (Month, Day, Year)	b. IF MARRIED, INDICATE DATE SPOUSE ARRIVED AT POST (Month, Day, Year)

3. ☐ I hereby revoke the election made on _____ to receive service credit towards retirement effective with the pay period beginning _____. In lieu of extra service credit, I elect to receive the post differential for the remainder of my assignment to this post (or until designation for post differential is canceled).
If married, is spouse residing with you on date of revocation or cancellation of election?
☐ YES ☐ NO → INDICATE DATE SPOUSE DEPARTED POST ..... *(Date)* _____

a. EVENT PERMITTING CHANGE	b. SIGNATURE OF PARTICIPANT (Do Not Print)	DATE

4. RESIDENCE OF SPOUSE
☐ My spouse accompanied me to the post listed and resided for the duration of my assignment.
☐ My spouse arrived at the post _____ and resided for the duration of my assignment.
☐ My spouse arrived at the post on _____ and departed on _____.

a. SIGNATURE OF PARTICIPANT	DATE	b. SIGNATURE OF SPOUSE	DATE

5. CERTIFICATION
I hereby certify that the person indicated was not paid post differential while assigned to the post indicated above, as follows.

a. EFFECTIVE DATE (Month, Day, Year)	b. TERMINATION DATE (Month, Day, Year)	c. REMARKS

d. AUTHORIZED PAYROLLING OFFICER (Typed Name)	e. AUTHORIZED PAYROLLING OFFICER'S SIGNATURE (Do Not Print)

6. DURING THE PERIOD OF ELECTION TO RECEIVE EXTRA SERVICE CREDIT TOWARD RETIREMENT, THE PERSON INDICATED ABOVE WAS ON TEMPORARY DUTY, DETAIL, OR CONSULTATION AT THE POSTS FOR THE PERIOD INDICATED BELOW.

POST	FROM *(Date)*	THROUGH *(Date)*
POST	FROM *(Date)*	THROUGH *(Date)*
POST	FROM *(Date)*	THROUGH *(Date)*

I certify the information reflected on this form is accurate and is reflected on the records of this post.	AUTHORIZED CERTIFYING OFFICER'S SIGNATURE (Do Not Print)

INSTRUCTIONS

1. This election is available *only to participants* in the Foreign Service Retirement and Disability System and only if the post of assignment is classified as unhealthful and is listed in 3 FAM Exhibit 671.5-14 and has prospective effect only. The payment of post differential does not necessarily mean the post is classified as "unhealthful."
2. Chiefs of Mission as well as all other participants in the Foreign Service Retirement and Disability System who wish to receive extra credit towards retirement in lieu of post differential are required to complete this Form, also to record the residence or non-residence of their spouse at an unhealthful post. See 3 FAM 671.7-3.
3. A participant who is serving as chief of mission at a Class I mission will not be required to complete this form to receive extra credit, but only to record the residence or non-residence of a spouse.
4. If the designation of the post as unhealthful is canceled, extra service credit ceases on the effective date of cancellation as reflected in 3 FAM Exhibit 671.5-14.

GUIDE FOR PREPARATION

A. Prepare original and three (3) copies. Notify payrolling Post to terminate (reinstate) post differential.

Distribution:

Original and one copy are retained by the Authorized Certifying Officer until employee's departure from post, at which time the original is forwarded to the participant's Agency via the Payrolling Office.

For State: The Bureau of Personnel, PER/ER/RET.

For AID: Office of Personnel and Training, PM/ERS/RET.

For USIA: Office of Personnel Management, M/PDSR or B/PS, Broadcasting Personnel Office.

For FAS: Personnel Division, Management/FAS/USDA.

For FCS: Personnel Management Division/FCS/Commerce.

For APHIS: Personnel Division/IOSP/USDA.

One copy retained for post's files.

One copy to employee when originally executed.

PRIVACY ACT STATEMENT

AUTHORITY

Subchapter 8 of Title 22, U.S.C. and Chapters 87 and 89 of Title 5, U.S.C. authorizes the Foreign Service Retirement and Disability System, the Federal Employees Health Benefits Program, and the Federal Employees Group Life Insurance Program.

PURPOSES AND USES

The primary purposes of the information solicited are to support enrollment, document an election not to enroll, and/or support a present or future claim for benefits under the Foreign Service Retirement and Disability System, the Federal Employees' Health Benefits Program, and/or the Federal Employees' Group Life Insurance Program. The information may be shared with a) other Federal agencies, b) national, state, county, municipal, or other publicly charitable or social security administration agencies, and c) private insurance carriers providing elected benefits. It will be shared only to the extent necessary to adjudicate a benefit or determine enrollment under the programs administered by such agencies.

EFFECTS OF NONDISCLOSURE

Provision of the information requested is voluntary; however, failure to supply all of the information may delay or prevent action on your, or your survivor's enrollment or claim for benefits.

INFORMATION REGARDING DISCLOSURE OF YOUR SOCIAL SECURITY NUMBER UNDER PUBLIC LAW 930579 SECTION 7(b), IF APPLICABLE

Disclosure by you of your Social Security Number (SSN) is mandatory to obtain the services, benefits, or processes that you are seeking. Solicitation of the SSN by the United States Department of State is authorized under provisions of Executive Order 9397, dated November 22, 1943. The SSN is used as an identifier throughout your Federal career from the time of application through retirement. It will be used primarily to identify your records that you file with the Department of State and other Federal agencies in connection with lawful requests for information about you from your former employers, educational institutions, and financial or other organizations. The information gathered through the use of the number will be used only as necessary in personnel administration processes carried out in accordance with established regulations and published notices of systems of records. The SSN also will be used for the selection of persons to be included in statistical studies of personnel management matters. The use of the SSN is made necessary because of the large number of present and former Federal employees and applicants who have identical names and birth dates, and whose identities can only be distinguished by the SSN.

OPTIONAL FORM 140 (REV. 12-83) BACK
STATE-AID-USIA

GPO : 1984 O - 420-498 (18)

4. CERTIFICATION BY AUTHORIZED CERTIFYING OFFICER

I hereby certify that the above-named person was not paid a post differential while assigned to the post indicated above, as follows:

EFFECTIVE DATE (Mo. Day Yr.)	TERMINATION DATE (Mo. Day Yr.)	REMARKS:

(Authorized Payrolling Officer's Signature - DO NOT PRINT)

During the period of election to receive Extra Service Credit Toward Retirement, the person indicated above was on temporary duty, detail, or consultation at the posts for the period indicated below:

POST	FROM (Date)	THROUGH (Date)
POST	FROM (Date)	THROUGH (Date)
POST	FROM (Date)	THROUGH (Date)

I certify the information reflected on this form is accurate and as reflected on the records of this post.

(Authorized Certifying Officer's Signature (DO NOT PRINT)

5. RESIDENCE OF SPOUSE

____ My Spouse accompanied me to the Post listed and resided for the duration of my assignment.

____ My Spouse arrived at the Post on _____ and resided for the duration of my assignment.

____ My Spouse arrived at the Post on _____ and departed _____.

Signature of Participant

(Date)

Signature of Spouse

(Date)

DRAFT OF 140

672 SEPARATION OF RETIREMENT UNDER FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

672.1 Voluntary Retirement

672.1-1 Eligibility

a. Any participant who is at least 50 years of age and has 20 years of creditable service including at least 5 years of service credit toward retirement under the System (excluding military and naval service) may be retired on application and with the consent of the participant's agency from the Service with entitlement to an immediate annuity computed under section 673.

b. Any participant wishing to retire under these provisions should request the approval of the personnel office of the participant's agency approximately 3 months before the anticipated date of separation. Form OF-126, Residence and Dependency Report (formerly JF-20) (see section 124.3), showing the employee's separation address should be attached to Form OF-136, Application for Retirement (Exhibit 672.3-2a).

672.1-2 Cessation of Authority to Act for Government

After the date of separation for retirement, a participant is not authorized to act on behalf of the Government but is entitled only to such salary and allowance payments as may be due for service on and before the date of separation.

672.1-3 Date of Separation for Voluntary Retirement

a. The separation date of a participant other than a chief of mission retiring voluntarily shall be the date indicated on Form OF-136, Application for Retirement, and with the consent of the participant's agency. This date shall be after the completion of any authorized consultation and/or allowable transit time. This date may be changed if requested by the participant with the consent of the agency before the effective date.

b. In the case of a participant retiring voluntarily while chief of mission, the date of separation shall be the date indicated on Form OF-136, Application for Retirement and with the consent of the participant's agency, which would include authorized consultation, and/or allowable transit, provided this date does not extend beyond 50 calendar days from the date of relinquishment of duties.

672.2 Mandatory Retirement

Regulations governing mandatory retirement (1) for age, (2) for completion of maximum time in class, (3) based on relative performance, and (4) of former Presidential appointees who are not reassigned, are contained in section 730.

672.3 Disability Retirement

672.3-1 General Policy

a. Eligibility Requirements

A participant shall be retired for disability under section 808 of the Act when:

(1) The participant becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or willful conduct on the participant's part; and

(2) The participant has at least 5 years of service credit toward retirement under the System (excluding credit for military and naval service).

b. Who May File Application

(1) An application may be filed either by the participant or by the personnel office of the employing agency in accordance with section 672.3-2. If the participant has been adjudged incompetent, a guardian may apply in the participant's behalf.

(2) Such application must be filed either before the participant is separated from the Service or within 1 year thereafter unless PER/ER/RET waives this requirement in accordance with section 808(f) of the Act.

c. Minimum Disability Annuity Computation

The annuity of a participant retired for disability is computed under section 673.3 but if the participant has less than 20 years of service credit, the annuity is computed on the assumption that the participant has 20 years of service. The additional service credit that may accrue under this provision in no case may exceed the difference between the participant's age at the time of retirement and 65. However, if a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in section 8332(c)(1) or (2) of title 5 of the U.S. Code) or pension or compensation from the Veterans Administration in lieu of such retired or retainer pay, the annuity of that former participant shall be computed without the extra service credit authorized by this paragraph and excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532 of title 5 of the U.S. Code, or the pension or compensation from the Veterans Administration in lieu of such retired or retainer pay, is less than the annuity that would be payable under this paragraph in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity computed under this paragraph.

d. Election Between Foreign Service Retirement Annuity and Worker's Compensation

As a general rule, a participant who is disabled or injured in the line of duty may not receive both an annuity under the Act and compensation for work injuries under 5 U.S.C. 8101-8150 for the same period of time. A participant may apply for whichever benefit is more advantageous.

Even though electing to receive compensation, the participant may also apply for retirement upon separation, but annuity payments are suspended during the period the participant is receiving compensation. By so applying, the participant will protect annuity rights along with any survivor rights under the Act should workers' compensation be discontinued. If the participant does not wish to apply for retirement, eligibility to obtain a refund under section 673.8 is established. However, if the participant applies for and receives a refund the participant and survivor(s) will lose the right to the annuity. The general bar against receipt of annuity and compensation at the same time is subject to the following exceptions:

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(1) An employee receiving compensation benefits as a consequence of the death of another person may also receive annuity under the Act on the basis of creditable service.

(2) The right of any person entitled to an annuity under the Act is not affected because that person has received:

(a) A scheduled disability award under 5 U.S.C. 8107 for the loss of a bodily member; or

(b) A lump-sum commuted payment under 5 U.S.C. 8135 of a monthly compensation award for work injuries.

However, if a Foreign Service annuity is payable on account of the same disability for which monthly compensation was awarded in order to qualify for the annuity, the annuitant must refund to the Office of Workers' Compensation Programs, Department of Labor, that portion of the commuted payment determined by the Secretary of Labor to cover any period extending beyond the effective date of the annuity.

672.3-2 Initiation of Disability Retirement

Disability retirement may be initiated by the participant or by the employing agency.

a. By the Participant

(1) Any participant meeting the eligibility requirements set forth in section 672.3-1a may submit Form OF-136 (formerly JF-32), Application for Retirement (Exhibit 672.3-2a) to the personnel office of participant's agency (PER/ER/RET in the Department) requesting consideration for disability retirement.

The participant must include in the application a description of the disability and a full explanation of the manner in which it affects performance of duties. The participant may enclose with the application a statement by a private physician describing the claim for disability. Failure to do so, however, shall not adversely affect the consideration of the application.

The participant must inform own immediate supervisor of the application for disability retirement and the date of the application.

(2) The appropriate agency personnel office will—

(a) Promptly obtain, whenever possible, a Superior Officer's Statement (Form JF-32a) as explained in section 672.3–2b and attach the statement to the application;

(b) Consult with the Office of Medical Services (M/MED) and schedule any medical examination requested by M/MED or the participant; and

(c) Send the application and the Superior Officer's Statement (Form JF 32-a) to PER/ER/RET.

(3) PER/ER/RET will control the application and forward it to M/MED for action under section 672.3-3.

b. By the Agencies

A recommendation for the disability retirement of any participant may be initiated by the main personnel office of any employing agency (PER/FCA or PER/CCA in the Department). Such office shall observe the following procedures when filing an application to retire a participant for disability when the participant does not make application:

(1) **Determinations**. The appropriate personnel office determines whether a reasonable assumption exists that the participant is totally disabled or incapacitated for useful and efficient service. Determination is made on the basis of supervisory observation, job performance, attendance records, knowledge of illness, accident, hospitalization, or upon other documented evidence. That office determines whether the participant meets the minimum requirement established in section 672.3-1a(2).

(2) **Superior Officer's Statement**. The appropriate personnel office shall, when possible, request the immediate superior officer of any participant being considered for disability retirement to prepare a written statement describing in detail the nature of the applicant's apparent disability and explaining the manner, if any, in which it affects the performance of official duties. (Form JF-32a, Superior Officer's Statement in Connection with Disability Retirement, may be used for this purpose. See Exhibit 672.3-2b).

(3) **Counseling**. If it appears that the participant is eligible for disability retirement, the appropriate agency officer will counsel the individual regarding retirement possibilities and procedures. If eligible to apply on own behalf and the participant so elects, action is effected under section 672.3-2a.

If retirement is not voluntary and the agency elects to initiate disability reitirement action, the participant is counseled as to the right to designate a representative to advise and assist in connection with the proposed action.

When the participant does not designate a representative, and it is considered in the participant's interest to do so, the appropriate agency may designate such a representative.

(4) **Responsibility of a Representative.** The designated representative of a participant who is being considered for disability retirement will receive copies of notices, determinations, decisions, or any other written communications pertinent to the action being taken by the appropriate agency. Such representative will advise and assist or represent the participant on any matters relating to the proposed retirement action.

(5) **Fitness-for-Duty Examination**. When the appropriate agency personnel office believes that a participant may be totally disabled or incapacitated for useful and efficient service within the meaning of section 672.3-1, it may, after consultation with the Medical Director, direct the participant to report to the Medical Director of the Department of State and the Foreign Service for a fitness-for-duty examination.

The participant and representative as may be appropriate, must be notified in advance in writing, and the notice shall set forth the reasons for the medical examination and its general scope. The examination will be conducted under section 672.3-3a. A copy of the letter and the participant's case file will be forwarded to the Medical Director.

A participant refusing to submit to the examination, is requested to decline in writing. Despite such refusal, the appropriate agency may continue to process the application for retirement on the basis of other available evidence.

When the participant is found medically **fit** for duty, by the Medical Director, procedures under this section will be discontinued.

When the participant is found to be medically **unfit** for duty on the basis of a medical examination conducted by, or under the direction of the Medical Director of the Department of State and Foreign Service, the personnel office of the participant's agency will be so advised.

(6) **Notice of Proposed Agency Application and Participant's Rights**. When it is determined that an application for disability retirement appears to be justified and the par-

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ticipant has refused to apply, the appropriate agency personnel office shall notify the participant and/or the representative in writing of:

(a) Its determination;

(b) The reason for this determination;

(c) The participant's right, or the right of a representative or the designated physician to review the case file, subject to the limitations specified below;

(d) The participant's right to a medical examination under the provisions of section 672.3-3b; and

(e) The participant's right to answer orally or in writing, or both, and to submit affidavits or documentary evidence, or both, to an official designated to receive the answer.

The participant's answer must be submitted within 15 calendar days, unless an extension is granted by the official designated to receive the answer. An oral answer must be summarized in writing by the official receiving it, and included in the case file.

Limitations: Specific and detailed reasons and findings that are required by section 672.3-2 are to be given to a participant, except when they relate to a physical or mental condition about which a prudent physician would hesitate to inform the participant. In such cases, only general reasons and findings are given to the participant and any representative, and the person is informed that a full report of the medical evidence on file will be made available in M/MED to a licensed physician designated in writing or representative for that purpose.

(7) **Action on Participant's Answer**. The appropriate agency personnel office will:

(a) Review the participant's reply, if any, including any evidence that was submitted and the report of medical opinion, then make a determination whether to file the application for disability retirement;

(b) Inform the participant in writing of its determination, and the findings supporting that determination; and

(c) File an application on behalf of the participant if it determines that a reasonable assumption of disability exists.

672.3-3 Medical Examinations and Reports

Medical examinations in connection with disability retirement are conducted by one or more duly qualified physicians, as follows:

a. Examination by the Medical Director

The examination is conducted by, or under the direction of, the Medical Director of the Department of State and the Foreign Service.

b. By a Board of Medical Examiners

(1) **When a Board Will Be Used**. The report of examination performed under section 672.3-3a is reviewed by a Board of Medical Examiners composed of three qualified physicians when:

(a) The disability retirement action is initiated by one of the agencies under section 672.3-2b(6);

(b) A participant initiating a disability retirement action elects to have the report of medical examination reviewed by a board;

(c) A participant appeals a determination based on an examination conducted by, or under the direction of, the Medical Director; or

(d) When the Director General of the Foreign Service or the Deputy Assistant Secretary for Personnel determines it to be in the interest of the Government to do so.

(2) **Designation of Boards**. Upon receipt of a proposed disability action for which a board is required, the Medical Director designates two qualified physicians to be members of the board, one of whom must be an expert or consultant who is not a full-time officer or employee of the Federal Government. The participant may designate a qualified physician as the third member of the board, or if the participant fails to do so, the Director will so designate. Not more than one member of the board may be a full-time employee of the Department.

(3) **Operation of Boards**. The members of a board have access to the entire case file and all medical records of the participant being examined. They may conduct, or arrange for, such additional tests and examinations as they consider necessary.

c. Medical Report

(1) The Medical Director, or the Board of Medical Examiners, if a Board is used, submits a written report to the Director General, setting forth the results of the examination conducted under section 672.3-3, or the results of a review of any other medical information concerning the participation if no such medical examination has been conducted.

(2) The medical report is comprehensive and includes pertinent data on all disabling or incapacitating conditions found or alleged to exist. The report also contains a statement of opinion on the following points:

(a) Whether the participant is totally disabled or incapacitated for useful and efficient service.

(b) If the participant is considered to be totally disabled:

(i) Whether the disability or incapacity was caused by disease, illness, or injury, but not due to vicious habits, intemperance, or willful conduct; and

(ii) Whether the disability or incapacity is permanent.

(3) The report is submitted to the Director General through the appropriate personnel office as a part of the case file.

672.3-4 Determination of Disability

a. Director General's Determination

The entire case file, including comprehensive medical reports and opinions concerning the participant's condition, is reviewed by the Director General or the Deputy Assistant Secretary for Personnel who makes a determination of whether the participant is disabled or incapacitated for purposes of section 808 of the Act.

This constitutes a final determination unless, within 30 days, the participant or participants' designated representative requests reconsideration under section 672.3-8.

b. Notification to the Participant

The Director General of the Foreign Service or the Deputy Assistant Secretary for Personnel notifies the participant and the appropriate personnel office in writing of the foregoing final determination.

672.3-5 Date of Separation and Commencement of Disability Annuity

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a. Date of Separation

Upon the approval by the Director General or Deputy Assistant Secretary for Personnel of a disability retirement, the date of separation is established as follows, except that a participant is not continued in a pay status past the end of the month during which the participant reaches mandatory retirement age (see section 730):

(1) If the participant is then on leave without pay, the date of separation is the date approval is granted.

(2) If the participant is then on sick leave, the date of separation is the day sick leave expires, unless the participant elects to apply such sick leave to the participant's service credit. The effective date is then established when the participant ceases sick leave status.

(3) If the participant is still at work on the date of approval, the participant must promptly relinquish official duties. The participant may apply for and may be granted the maximum amount of sick leave to which entitled. (See section 446.2). The effective date of separation in such case is the day the sick leave expires, unless sick leave credit is elected, as stated in subparagraph (2) above.

b. Commencement of Annuity

The annuity in disability retirement cases begins on the day following termination of pay status unless the participant becomes disabled while on leave without pay. In the latter case, the annuity begins on the day after the disability occurs as determined by the Medical Director.

If in the case of disability retirement, the participant is on leave without pay, the annuity is computed through date of approval and becomes payable the date pay ceased or the date the disability occurred, whichever is later.

672.3-6 Annual Review and Evaluation of Disability Status

a. General Policy

(1) **Temporary Disability Cases**. Each annuitant whose disability or incapacity is not determined to be permanent, is given an annual medical examination from the date of medical determination until one of the following conditions exists:

(a) The disability is determined to be permanent;

(b) The annuitant has reached the statutory mandatory retirement age of 65; or

(c) The annuitant has recovered.

(2) **Permanent Disability Cases**. Whenever an annuitant's disability is determined to be of a permanent character, the annuitant is not given an examination again unless in the opinion of the Director General of the Foreign Service or Deputy Assistant Secretary for Personnel such action is warranted by unforeseen circumstances or conditions subsequently found to exist.

b. Medical Examinations

When the disability has been determined to be temporary, the Medical Director arranges for the required annual medical examination of an annuitant retired for disability or incapacity before the anniversary of the date on which such medical determination of disability was made. The annual examinations are conducted by, or under the direction of, the Medical Director, or by a Board of Medical Examiners, as provided in sections 672.3-3a and 672.3-3b.

The Medical Director, at any time subsequent to the initial examination on which disability or incapacity was determined, on the basis of additional medical information, may submit a recommendation to the Director General that an annuitant's disability or incapacity is permanent.

c. Medical Report

The Medical Director, or the Board of Medical Examiners, makes a written report setting forth the results of the examination. The report also contains a statement of opinion by the Medical Director, or the Board, on the following points:

(1) Whether the annuitant continues to be totally disabled or incapacitated for useful and efficient service; and

(2) If so, whether the disability or incapacity is permanent.

All reports are submitted by the Medical Director through PER/ER/RET to the Director General.

d. Determination of Disability Status

Upon review of the report of the Medical Director, or of the Board of Medical Examiners, the Director General or Deputy Assistant Secretary for Personnel determines:

(1) Whether the annuitant continues to be totally disabled or incapacitated for useful and efficient service; and

(2) If so, whether the disability or incapacity is permanent.

e. Notice to Annuitant

PER/ER/RET notifies the annuitant in writing of the foregoing determinations.

f. Failure to Submit to Examination

If a disability annuitant fails to submit to the examination or examinations required under section 672.3-6a, payment of the annuity is suspended until such examinations are completed.

672.3-7 Reinstatement or Reappointment of Recovered Foreign Service Annuitants

a. Whenever on the basis of a medical examination the Director General or Deputy Assistant Secretary for Personnel determines that an annuitant has recovered to the extent that the annuitant can return to duty and is no longer disabled or incapacitated for useful and efficient service, the annuitant may, within a period of 1 year from the date on which recovery is determined, apply for reinstatement or reappointment in the Service as provided under section 125.4-2, for State; Handbook 25 chapter 6g, for AID; or MOA V-B-1138.2 for USIA; 3FASR81, for FAS; or (to be provided) for FCS.

b. If for any reason a recovered disability annuitant whose annuity is discontinued is not reinstated or reappointed in the Service, the annuitant is considered to have been separated as of the date on which the individual was retired for disability. In such event the individual is, after discontinuance of the disability annuity, entitled to a lump-sum payment under section 673.8. Alternatively, the annuitant may elect to leave own contributions in the Fund and apply for voluntary retirement under section 672.1, if eligible, or a deferred annuity at age 60 under section 672.4.

c. Payment of the annuity continues until 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier.

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672.3-8 Appeals

A participant or annuitant who is dissatisfied with one of the determinations made under the provisions of section 672.3-4 or 672.3-6c may request that one's case be reconsidered by submitting an appeal.

a. Submission

The appeal, addressed to the Under Secretary for Management, shall be submitted within a period of 30 days following the date the participant or annuitant received the determination, unless prior to the expiration of the 30 days an extension is granted by the Under Secretary for Management. The appeal should contain a full statement of the reason for seeking reconsideration and any pertinent data the participant or the annuitant may care to submit.

b. Availability of Case File

The case file, containing all available previous considerations by the Director General or the Deputy Assistant Secretary for Personnel and all evidence submitted by the participant and by the appropriate agency, will be available for inspection by the participant and designated representative, as may be appropriate, subject to the limitations of section 672.3-2b(2), and by the agencies.

c. New Evidence

When the participant has offered new evidence on appeal, or if the agency has information developed since submission of the case file, additional evidence may also be submitted by the agency.

d. Review and Determination of Appeal

The Under Secretary for Management reviews all appeals under this section, taking into account all of the data and information submitted by the participant or annuitant, all of the data and information previously considered by the Director General of the Foreign Service, or the Deputy Assistant Secretary for Personnel, and any additional evidence submitted by the appropriate agencies. The Under Secretary for Management may have such additional examinations or investigations made as are considered necessary.

On the basis of this review, the Under Secretary for Management makes the final determination of the participant's or annuitant's disability or incapacity within the meaning of section 808 of the Act.

672.3-9 Allowable Medical Examination Expenses

a. Expenses, including travel, incurred in connection with the designation of physicians and the examinations required under section 672.3–3 and 672.3-6 are paid as follows:

(1) **Participants**. Expenses incurred in determining whether participants will be retired for disability or incapacity are paid under provisions of section 680;

(2) **Annuitants**. Upon approval of the Medical Director, the following expenses incurred for the reexamination of annuitants are paid from the Fund:

(a) Fees for the examinations; and

(b) Reasonable travel and subsistence expenses of the annuitant to and from the place of examination when the annuitant is able to travel, without regard to the Federal Travel Regulations;

(3) Reasonable travel and subsistence expenses of the designated physician(s) to and from the place of examination when the annuitant is physically unable to travel; and

(4) Such additional expenses for the examinations as are actually and necessarily incurred in the interest of the annuitant; for example, superior travel accommodations, hospitalization while undergoing examination, or travel expenses of an attendant.

b. Travel expenses in excess of the amounts allowable under section 680 are not normally approved.

672.4 Discontinued Service Retirement

Any participant who is not eligible for an immediate annuity under section 672.1, 672.2, or 672.3 who separates from the Service after obtaining at least 5 years of creditable service towards retirement (excluding military or naval service) may, upon separation from the Service or at any time prior to becoming eligible for an annuity, elect:

a. To have contributions returned under section 673.8; or

b. To leave such contributions in the Fund and to receive a deferred annuity commencing at age 60. Effective at age 60, a former participant entitled to a deferred annuity shall have own annuity computed according to section 673 with survivor benefits as stated therein. If a former participant who has qualified for a deferred annuity dies before reaching age 60, the former participant's contributions will be paid in accordance with section 673.8, except that if such former participant was retired under section 607(c)(1) of the Act because of expiration of time in class, or section 608(b) of the Act based on relative performance, such death shall be considered a death in Service and entitle an eligible survivor to benefits under section 673.5-6.

672.5 Separation Without Annuity

672.5-1 Refunds or Transfers of Contributions Upon Separation Before Becoming Eligible for an Annuity or a Deferred Annuity

a. Any participant who is separated from the Service with less than 5 years of creditable service shall receive a lump-sum payment under section 673.8.

b. Any participant who is separated from the Service with at least 5 years of creditable service (excluding military or naval service) may elect to receive a lump-sum payment under section 673.8 or to the contributions in the Fund and receive a deferred annuity, as provided in section 672.4. Such a separated participant may elect a lump-sum payment under section 673.8 up to the date the deferred annuity begins. An election to receive a lump-sum payment cannot be changed once it becomes final. A lump-sum payment election is considered final when the refund check is negotiated by the separated employee or by a former spouse if a share of the lump-sum payment is authorized under section 673.8-2.

c. Any participant who is separated and accepts a position in the Federal Government under another retirement system for civilian employees withdraws from participation in the System. The provisions of paragraphs a and b apply, or the participant may, subject to the approval of the gaining retirement system, have the lump-sum credit under section 673.8 and creditable service transferred to the gaining retirement system.

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672.5-2 Documentation for Requesting a Refund or Transfer of Contributions

The following documents must be received by the Department before the refund or transfer of compulsory Foreign Service contributions:

a. A completed Optional Form 138 Application for Refund of Retirement Contributions (Exhibit 672.5-2) (see 4 FAM 487.21);

b. Submission of the participant's current pay record by the budget and fiscal office to the appropriate agency; and

c. For AID, USIA, FCS, FAS and APHIS, and PC employees, the transfer of the retirement file and retirement account.

If the funds are to be transferred in accordance with section 672.5-1 to the Civil Service Retirement and Disability System, a Form SF-2803, Application to Make a Deposit or Redeposit, Civil Service Retirement and Disability System, must be sent and certified by the employing agency.

672.6 Recovery of Overpayments

Recovery of overpayments to an eligible annuitant under the Act may not be made from an individual when, in the judgment of M/COMP/FO, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible (see 22 CFR Part 17 for procedure).

672.7 Waiver of Annuity

An individual entitled to be paid an annuity may, for personal reasons, decline to accept all or any part of the annuity. However, a principal may not waive the portion of principal's own annuity authorized to be paid to a former spouse under sections 673.2 or 671.9 or to a beneficiary under section 671.8. An annuity waiver must be in writing and be sent to the Department (PER/ER/RET). A waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

673 BENEFITS UNDER THE FOREIGN SERVICE RETIREMENT SYSTEM

673.1 Entitlements and Obligations

673.1-1 Lifetime Annuity

Participants who retire under sections 672.1, 672.2, or 673.3 are entitled to a lifetime annuity commencing on the day following separation from active duty, or on such other date as is specified herein.

Former participants who qualify for a deferred annuity under section 672.4 are entitled to a lifetime annuity commencing at age 60. Survivorship obligations are determined and elections made as of the date annuity commences unless otherwise specified in this chapter. Annuities to former participants are payable through the date of death, unless discontinued by reason of recovery from disability under section 672.3. Annuities are suspended during periods of recall to active duty in the Foreign Service or reemployment by a Government agency pursuant to section 125.5.

673.1-2 Obligations

Participants and former participants are obligated by the Act and these regulations to provide the following benefits to others and must accept the necessary reductions in their own retirement benefits to meet these obligations:

a. A pension to a former spouse pursuant to section 673.2;

b. A court-ordered apportionment of annuity to a previous spouse or child under section 671.8-1(6) (the benefit to a child referred to here is paid during the annuitant's lifetime as distinguished from the automatic survivorship annuity to a child described in section 673.5-7);

c. A regular survivor annuity to a former spouse who has not remarried before age 60, and to a spouse to whom married when annuity commences, pursuant to sections 673.5-2 and 673.5-3;

d. An additional survivor annuity for a spouse or former spouse under section 673.4-5 when elected by the participant or ordered by a court;

e. Lump-sum payments to a former spouse pursuant to section 673.8; and

f. Benefits ordered by a court under section 671.8 or specified in a spousal agreement under section 671.9.

673.2 Pension Benefits for Former Spouses

673.2-1 Entitlement

a. Unless otherwise expressly provided by a spousal agreement under section 671.9 or a court order under section 671.8, a person who, after February 15, 1981, becomes a former spouse of a participant (or former participant who separated from the Service after February 15, 1981) and who has not remarried before becoming 60 years of age becomes entitled to a monthly pension benefit effective on a date determined under subsection 673.2-1 in an amount determined under subsection 673.2-3.

b. A former spouse shall not be qualified for a pension under this subsection if, before the commencement of that pension, the former spouse remarries before becoming 60 years of age.

c. A pension benefit under this section is treated the same as a survivor annuity for purposes of subsection 673.5-5b: a former spouse who elects to receive a pension under this section must waive simultaneous receipt of any survivor annuity.

673.2-2 Commencement and Termination

a. The pension of a former spouse under this subsection commences on the latter of the day the principal becomes entitled to a Foreign Service annuity or on the first day of the month in which the divorce becomes final. (Suspension or reduction of a Foreign Service annuity because of reemployment does not affect the commencement of a pension to a former spouse. See section 673.2-4.) In the case of any former spouse of a disability annuitant, the pension of such former spouse shall commence on the latter of:

(1) The date the principal would qualify for an annuity (other than a disability annuity) on the basis of the principal's creditable service;

(2) The date the disability annuity begins; or

(3) The first of the month in which the divorce becomes final.

b. The pension of a former spouse and the right thereto terminate on:

(1) The last day of the month before the former spouse dies or remarries before 60 years of age; or

(2) The date the annuity of the former participant terminates unless the termination results from recall, reappointment, or reinstatement in the Foreign Service or reemployment in the Government service.

673.2-3 Computation and Payment of Pension to Former Spouse

a. A pension to a former spouse is paid monthly on the same date that annuity is paid to the principal.

b. No spousal agreement or court order may provide for a pension or any combination of pensions to former spouses of any one principal which exceeds the net annuity of the principal as defined in section 671.8-2b.

c. A pension to a former spouse not fixed by a spousal agreement or court order shall equal the former spouse's pro rata share of 50 percent of the annuity to which the principal is entitled on the date the divorce becomes final, or, if not then entitled to an annuity, 50 percent of the annuity to which the principal first becomes entitled following that date. A pension to a former spouse of a disability annuitant shall be calculated on the basis of an annuity for which the participant would qualify if not disabled. A pension to a former spouse will be increased by the same percentage of each cost-of-living adjustment received by the principal under section 673.11.

d. The Department will initiate payment of a pension to a former spouse after complying with the notification and other procedures described in section 671.8.

e. If a pension can not be paid because a former spouse is missing, the principal may file an affidavit with PER/ER/RET that the principal does not know the whereabouts of the former spouse. In such a event, the principal and the Department will follow the procedures in section 673.5-4 in an effort to locate the former spouse. The annuity of the principal will be reduced by the amount of the pension to the former spouse even though the latter is not being paid. If the former spouse has not been located during the 12-month period following the date the principal files an affidavit under this section, the annuity of the principal will be recomputed effective from its commencing date (or on the date following the last month a pension payment was made to the former spouse) and paid without reduction of the amount of the pension to the former spouse. If the former spouse subsequently is located, pension payments to that former spouse will be initiated at that time at the rate that would have been payable had they been paid continuously from the original effective date. The Department shall not be liable to make any pension payments to the former spouse for the missing period if the procedures under this section were faithfully complied with nor will the Department be responsible for recovering any payments made to the principal for the benefit of the former spouse.

673.2-4 Effect on Annuitant

Any pension payable to a former spouse under this section or pursuant to any spousal agreement or court order shall be deducted from the annuity of the principal. (See section 671.8-4 concerning retroactive adjustment.) If the annuity of such a principal in any month is discontinued or reduced so that the net amount payable is less than the pension to the former spouse or spouses of the principal because of recall, reappointment, or reinstatement in the Foreign Service or reemployment in the Government service pursuant to section 125.5, the principal's salary, rather than annuity, shall be reduced by the amount of the pension payment(s). Such salary reductions shall be deposited in the Treasury to the credit of the Fund. See section 673.4-7a for pension adjustment at time annuitant reverts to retired status. If a pension to a former spouse is discontinued for any reason except a suspension pending a determination of entitlement, the annuity of the principal shall be recomputed effective as of the date of discontinuance of pension, and paid as if the pension to the former spouse had never been deducted.

673.2-5 Responsibility for Effecting Salary Reduction

Whenever M/COMP/FO discontinues or reduces a Foreign Service annuity because the annuitant has been recalled, reappointed, or reinstated in the Foreign Service, or reemployed in a Government agency, it shall determine whether the annuitant's salary must be reduced pursuant to section 673.2-4. If so, it shall effect the salary reduction or inform the appropriate payroll office or employing agency of the requirement and the procedures to be followed.

673.3 Computation of Annuity to Members

673.3-1 Basic Formula

a. Except as provided in section 673.3-2, the annuity of a participant shall be equal to 2 percent of participant's average basic salary for the highest 3 consecutive years of service, multiplied by the number of years not exceeding 35 of service credit computed under section 671.5.

b. A participant with creditable service for which deductions were not made, for any reason, may receive credit for this service in the computation of annuity benefits without making a special contribution, by accepting an annuity reduction of 10 percent of the amount owed determined under section 671.4-3a. A participant or survivor may make a special contribution to cover the amount owed for this period of service at any time before receipt of annuity. If a special contribution is not made by the participant or survivor, or installment payments are begun and not completed, the annuity otherwise payable is reduced by an amount equal to 10 percent of the balance due and unpaid, unless the participant elects to eliminate the service from credit for annuity computation purposes. The elimination of a period of service from credit is advisable only when the participant has sufficient other service for entitlement to the maximum service credit—35 years not counting credit for unused sick leave.

c. If a participant has service for which retirement contributions were made and refunded, a special contribution must be made for this service, or the service will not be creditable. If a special contribution to purchase such service is not completed before retirement, the participant or survivor in the case of death in service, may elect to have the net annuity (for example, minus health benefits and life insurance premiums and other mandatory deductions) offset against the amount owed to cover the required special contribution provided that the total amount owed can be collected from accrued annuity in 4 months or less. If the amount owed cannot be collected within 4 months, the special contributions must

be paid in a lump-sum before the beginning of the annuity payments, or at least an initial payment must be sufficient so that the balance can be collected from the first 4 months of annuity payments, or the service can not be used in the computation of the annuity. (See section 671.4-3 for the payment of special contributions.)

d. If the annuitant dies during the offset period, the survivor annuity may be used to complete the offset.

e. Annuities are effective on the day after separation, or day after participant's pay status terminated and the age and service requirements have been met.

673.3-2 Exception to "Highest 3 Consecutive Years" Provision

a. The annuity of any participant whose continuity of service in a position to which appointed by the President (whether or not confirmed by the Senate) is interrupted by appointment or assignment to any other position in the Executive Branch of comparable importance shall be computed on the basis of the highest 3 years of service (not necessarily consecutive).

b. When a participant serving in a position to which appointed by the President (whether or not confirmed by the Senate) is appointed or assigned to a position other than that of chief of mission, determinations shall be made as to:

(1) Whether participant's service was "interrupted;" and

(2) Whether the position to which appointed or assigned is comparable in importance to a position of chief of mission.

c. An interruption in the continuity of a participant's service as a chief of mission or in another position to which appointed by the President normally is deemed to occur when:

(1) It is determined that there are reasonable grounds for presuming that the participant would have continued to serve in the original position had the participant not been appointed or assigned to the new position; and

(2) The participant is appointed or assigned to the new position without having reverted to a permanent FS class following the termination of the participant's services in the original position. The determination whether the appointment or assignment constitutes an interruption of service shall be made by the Under Secretary for Management.

d. If the position to which the participant is appointed or assigned is not already on the list of comparable positions listed in section 554.3, the Director General of the Foreign Service may submit to the Under Secretary for Management for approval a recommendation that the position either is or is not comparable in importance to that of chief of mission.

e. In order for a participant to have the annuity computed on the basis of the provisions of this section, the position to which appointed or assigned must have been designated as comparable in importance before or at the time of participant's appointment or assignment to the position or during the period participant was in the position.

673.3-3 Sequence of Deductions

Any required reductions in annuity shall be computed in the following sequence:

First, the annuity shall be reduced as described in section 673.3-1b for failure to make a deposit for past service;

Second, the annuity as so reduced shall be further reduced as required to provide any regular survivor annuity for a spouse or former spouse as described in section 673.4-2 or to provide a survivor annuity for a designated beneficiary as described in section 673.4-6;

Third, the annuity as so reduced shall be further reduced by any pension payable to a former spouse under section 673.2.

Finally, if a court has ordered an apportionment of annuity under section 671.8-1(6), this amount shall be deducted from the remaining annuity payable to the principal.

673.4 Types of Annuities to Members

673.4-1 Full Annuity

If a participant retires and does not provide a survivor annuity to a spouse, former spouse, or designated beneficiary, the participant receives a "full" annuity. A full annuity means an annuity computed under section 673.3 without any survivorship reduction.

Example: Average salary $20,000 and maximum of 35 years of creditable service.

Average basic annual salary for high–3 consecutive years of service	$20,000
Multiplied by 2 percent	02
	$ 400
Multiplied by 35 years of creditable service	35
Full Annuity	$ 14,000

673.4-2 Reduced Annuity With Regular Survivor Annuity to Spouse or Former Spouse

a. At commencement of annuity, a participant or former participant may provide a regular survivor annuity for any eligible former spouse and, within the limits of paragraph b, a regular survivor annuity to any spouse to whom the participant is then married as described in sections 673.5-2 and 673.5-3, respectively. A regular survivor annuity for a spouse or former spouse equals 55 percent of the portion of the retiree's annuity (up to the full amount) designated as the base for the survivor annuity. To provide the survivor annuity, the participant must accept a reduction in own full annuity equal to 2-1/2 percent of the first $3,600 of the designated base, plus 10 percent of the balance of the base. If a regular survivor annuity is being provided for both a spouse and a former spouse, the bases for each are added and the calculation made as in the following example:

Participant's full annuity as computed in section 673.4 ..... $14,000

Maximum regular survivor annuity is 55 percent of full annuity ..... $ 7,700

CASE I (Participant has a spouse and former spouse at retirement.) If the pro rata share for a former spouse is 75 percent, the base for this benefit will be 75 percent of $14,000 ..... $10,500

The base for the maximum regular survivor annuity for a spouse would then be 25 percent of $14,000, or $3,500

Combined base $14,000

Participant's full annuity reduced as follows: 2–1/2 percent of first $3,600 of the base ..... $ 90

Plus 10 percent of the amount over $3,600 ($14,000 - $3,600) $10,400 ..... $ 1,040

Total reduction in participant's reduced annuity ... 1,130

Participant's reduced annuity $12,870

Survivor annuity for former spouse: 55 percent of $10,500 or $5,775

Survivor annuity for spouse: 55 Percent of $3,500 or $1,925

CASE II (Participant married at retirement with no former spouse. All calculations made without reference to cost-of-living increases described in sections 673.5–5d and 673.11.)

Joint election of base for regular survivor annuity of 90 percent of the maximum, or 90 percent of $14,000 or $12,600

Participant's full annuity reduced as follows: 2–1/2 percent of first $3,600 of the base ..... $ 90

Plus 10 percent of the amount over $3,600 ($12,600–$3,600) $9,900 ..... $ 900

Total reduction in participant's reduced annuity ... $ 990

Participant's reduced annuity ..... $ 13,010

In this example, if divorce occurs subsequent to retirement and a court orders a 75 percent share for the former spouse, the base for the survivor annuity for the former spouse would be 75 percent of $14,000 .....$ 10,500

The participant's full annuity would then be reduced by $780 in accordance with the above formula for this survivor benefit, and the reduced annuity would be $14,000–$780 ..... $ 13,200

If the former spouse qualifies for a pension as described in section 673.2 based on a pro rata share of 75 percent, the pension would equal 50 percent of the participant's reduced annuity times 75 percent (50 percent x $13,200 x 75 percent ..... $ 4,957.50

The participant's reduced annuity would then be further reduced by this pension ($13,200–$4,957.50) to provide an annuity to the former participant of ..... $ 8,262.50

If this annuitant later remarries, the maximum base for the regular survivor annuity for the new spouse would be the amount designated at retirement, $12,600, less the amount committed to the former spouse, $10,500: $12,600-$10,500 or $2,100. The survivor annuity for this spouse: 55 percent of $2,100 or $1,155.

The election of this benefit for the new spouse would be made individually by the annuitant since a marriage after retirement does not give a spouse a right to participate in the election.

If the election is made to provide a regular survivor annuity to the new spouse, all of the above calculations would be recomputed effective the first day of the month beginning 1 year after the date of the remarriage, as follows:

Base for survivor annuity for former spouse: 75 percent of $14,000 or $10,500.

Survivor annuity for former spouse: 55 percent of $10,500 or $5,775.

Base for survivor annuity for spouse: 15 percent of $14,000 or $2,100.

Survivor annuity for spouse: 55 percent of $2,100 or $1,155.

The combined base for the survivor benefits is $10,500 plus $2,100 or $12,600. The annuity reduction on this combined base as computed above is $990.

The participant's annuity after reduction for survivor benefit would be $14,000-$990 or $13,010.

The pension for the former spouse would be 50 percent x $13,010 x 75 percent or $4,878.75.

The participant's annuity would be further reduced by this amount: $13,010-$4,878.75 to provide an annuity after this recalculation of $8,131.25.

b. The maximum regular survivor annuity or combination of regular survivor annuities that may be provided under this section is limited to 55 percent of the principal's full annuity computed at retirement, under section 673.3-1. If an annuitant is recalled to active duty in the Foreign Service that annuitant may provide additional regular survivor annuities under section 673.4-7. The maximum regular survivor annuity or combination of regular survivor annuities that an annuitant who was married at retirement may elect or provide, pursuant to a court order or otherwise, after retirement in the event of annuitant's own divorce or remarriage, is limited to the amount provided at the time of initial retirement or reversion to retired status following recall service.

673.4-3 Marriage After Retirement

If an annuitant who was unmarried at the time of retirement marries, the annuitant may within 1 year after such marriage irrevocably elect to receive a reduced annuity and to provide, subject to any obligation to provide a survivor annuity for a former spouse, a survivor annuity for the new spouse. If such an election is made, the principal's annuity shall be reduced in accordance with section 673.4-2 effective on the first day of the first month which begins at least 1 year after the date of the marriage. The reduction to the principal's annuity and the amount of the survivor annuity elected is based on the full annuity on the effective date of the election. Receipt by PER/ER/RET of notice of an election under this section voids prospectively and any election previously made under section 673.4-6.

673.4-4 Death or Divorce of a Spouse and Remarriage After Retirement

a. If the marriage of an annuitant who received a reduced annuity at retirement under section 673.4-2 to provide a survivor annuity for a spouse is dissolved by divorce or by death of the spouse, the retiree's annuity shall be recomputed, if necessary, as of the first of the month following the death or divorce. If the marriage was dissolved by death, the annuity shall be recomputed and paid at its full amount. If the marriage is dissolved by divorce, procedures in section 673.5-2b shall be followed.

b. In the event an annuitant affected by this paragraph remarries, the annuitant may elect within 1 year of remarriage to provide a survivor annuity for the new spouse equal in amount to the survivor benefit formerly in effect for the previous spouse less any amount committed for a former spouse. The annuity of a retiree making such an election shall be reduced effective on the first day of the first month which begins at least 1 year after the remarriage to the amount that would have been payable had there been no recomputation under paragraph a.

673.4-5 Reduced Annuity With Additional Survivor Annuity to Spouse or Former Spouse

a. General Policy

This section provides an opportunity for a participant or former participant who has provided a regular survivor annuity to a former spouse to provide a survivor annuity to a second spouse or to another former spouse. The additional survivor annuity provided under this section generally is more costly than the regular survivor annuity because the participant is required to pay its full cost by deduction from salary or annuity, or otherwise, as specified in paragraph e. The participant must also be in normal health for the participant's age and pass a physical examination prescribed by the Secretary of State (M/MED) to be eligible to provide an additional survivor annuity under this section.

b. Limitation on Amount

Neither the total amount of additional survivor annuity or annuities under this section provided by any participant or former participant nor any combination of regular or additional survivor annuities for any one surviving spouse or former spouse of a principal may exceed 55 percent of the principal's full annuity counting any supplemental annuity or recomputation of annuity because of recall service. An additional survivor annuity provided by any principal shall be further limited to the amount that can be provided by a monthly payment which is not greater than the principal's net annuity described in section 671.8-2b. The amount of any additional survivor annuity provided by a spousal agreement effective before the principal's retirement, shall be reduced as necessary by PER/ER/RET after the principal's retirement to comply with this limitation. Any amount paid by a participant for the portion of additional survivor annuity canceled pursuant to this paragraph shall be treated as an additional lump-sum payment under paragraph e and used to increase the amount of the additional annuity. A participant who separates from the Service without entitlement to any annuity is not entitled to provide an additional survivor annuity. Payments in such a case would be discontinued as described in paragraph e.

c. Procedures to Grant Additional Survivor Annuity

A participant or former participant who has provided a regular survivor annuity to a former spouse who wishes to provide, or who is ordered by a court to provide an additional survivor annuity under this section to a spouse or another former spouse, shall do so by filing a spousal agreement with PER/ER/RET on a form acceptable to PER/ER/RET. Such an agreement will be irrevocable when accepted by PER/ER/RET unless the beneficiary of the additional survivor annuity is subsequently made a beneficiary of a regular survivor annuity in equal amount. Within the limitations specified in paragraph b, an individual may be made the beneficiary of both a regular and an additional survivor annuity. A spousal agreement granting an additional survivor annuity to a spouse will remain valid in the event the marriage is dissolved and the spouse qualifies as a former spouse under the definition in section 671.2(12).

d. Eligibility for Additional Survivor Annuity

A spouse or former spouse must meet the same criteria (section 671.2(w) or 671.2(l)) to be eligible for an additional survivor annuity as a spouse or former spouse must meet to be eligible for a regular survivor annuity. Payment of a special survivor annuity will commence on the day after the participant dies and shall terminate on the last day of the month before death or remarriage before attaining age 60. If it is discontinued because of remarriage, it will not be resumed.

e. Payment for Additional Survivor Annuity

Payment for an additional survivor annuity will commence on the first of the month following the effective date of a spousal agreement providing the additional survivor annuity. The effective date will be the date of acceptance of the spousal agreement by PER/ER/RET (upon a finding that the agreement conforms to the law and regulations) or such later date as may be specified in the agreement. No payment will be made to a beneficiary under the agreement if the principal dies before its effective date. Accordingly, in order to give protection to a beneficiary during active service, the agreement must be made effective, and payments commence, during active service. Payment will be made by a participant or annuitant by deduction from salary or annuity. Payment will be made by a former participant while awaiting commencement of a deferred annuity by direct payment to the Department, Office of Financial Operations (M/COMP/FO). Payments not received by the due date may, at the option of M/COMP/FO and with notice to the principal and the beneficiary, be collected from the principal's lump-sum account. Amounts so collected must be repaid by the principal with interest compounded at 10 percent annually to prevent exhaustion of the lump-sum account. If the lump-sum account does become exhausted, any right to the lump-sum payment under section 673.8 and survivorship rights under this paragraph will expire on that date. If the principal dies with an amount owing, it shall be collected by deducting from the survivor annuity or lump- sum account.

Monthly payments may be reduced or eliminated by direct payment to M/COMP/FO by any participant or former participant under terms mutually agreed upon by the participant

and PER/ER/RET. Minimum monthly payments will be based upon actuarial tables prescribed from time to time by M/DGP with the advice of the Secretary of Treasury. Such tables will be calculated so that the present value of all payments equal the present value of the survivor annuity. If new tables are prescribed, they would be applicable to additional survivor annuities provided by spousal agreements that become effective on or after the effective date of the new tables.

Additional survivor annuities will be increased by regular cost-of-living adjustments under section 673.5-5d from their commencing dates only when so specified at the option of the participant or former participant in a spousal agreement. Additional survivor annuities are not increased on their effective date by the cumulative percentage of adjustments received by the deceased principal, as are regular survivor annuities. Monthly payments will be higher if cost-of-living adjustments are provided.

In the event of the disqualification of a beneficiary for an additional survivor annuity because of death, remarriage before age 60, or divorce from the principal and failure to meet the definition of "former spouse," or in the event of an authorized reduction or cancellation of an election for an additional survivor annuity, the monthly payment for such discontinued or reduced additional survivor annuity will be discontinued or reduced, as appropriate, effective at the beginning of the first month following termination or reduction of the benefit. Except as otherwise specified in paragraph b, any amount paid for such discontinued or reduced benefit by a participant or former participant in excess of the minimum monthly payments described above shall be refunded to the participant or former participant with interest calculated at the annual rate used in the last evaluation of the System or at such higher rate as may be authorized by M/COMP/FO as will not cause a loss to the Fund. The following table illustrates the minimum monthly payments schedule in effect February 15, 1981.

Age of Principal and Beneficiary on Effective Date of Spousal Agreement	Minimum Monthly Payment Required to Provide an Additional Survivor Annuity of $100 per Month	
	No COLA	With COLA Commencement of Annuity
40	$ 7.49	$12.34
50	14.18	22.01
60	23.55	33.90
70	35.57	47.12
	Where Spouse Annuity and Participant's Contributions Increase With COLA From Date of Election	
40	$17.07	
50	26.45	
60	36.92	
70	48.88	
	Where Spouse Annuity Increases With COLA From Date of Election	
40	$31.12	
50	42.72	
60	53.08	
70	62.64	

Reduction from annuity to a principal to pay for an additional survivor annuity will be in the nature of an allotment and will not affect computations of cost-of-living adjustments to the principal.

673.4-6 Reduced Annuity With Annuity Payable to Designated Beneficiary Other Than Spouse

a. At the time of retirement (commencement of annuity), an unmarried participant who does not have a former spouse for whose benefit a reduction is made under section 673.5-2, may elect, by submission of Form JF-37, Election of Annuity Benefits, to receive a reduced annuity during lifetime and to provide for an annuity equal to 55 percent of the participant's reduced annuity payable after death to a beneficiary whose name shall be designated in writing.

b. The annuity payable to a participant making such election is reduced by 10 percent of an annuity computed as provided in section 673.4-1 and by 5 percent of an annuity so computed for each full 5 years the person designated is younger than the retiring participant. The total reduction shall not exceed 40 percent.

Example: If a retiring participant is entitled to a life annuity of $14,000 and names as beneficiary a person who is 19 years younger, the annuity to which annuitant is otherwise entitled is reduced by 25 percent, thus providing a reduced annuity of $10,500. The designated beneficiary's annuity will be 55 percent of the participant's reduced annuity or in this example the designated beneficiary's annuity is $5,775.

c. No election of a reduced annuity payable to a beneficiary is valid until the participant satisfactorily passes a physical esamination. M/MED will arrange for an examination without cost to the participant to determine whether the participant is in normal health for participant's age.

d. The annuity payable to a beneficiary under this section begins on the day after the annuitant dies, and terminates on the last day of the month preceding the survivor's death.

e. An annuity which is reduced under this section shall be recomputed, effective the first day of the month following the death of the beneficiary named, and paid as if the annuity had not been so reduced.

673.4-7 Benefits for Recall Service

a. Annuity of Recalled Participant

Any participant who is recalled to the Service under the provisions of section 125.5l shall be entitled, while so serving, in lieu of annuity to the full salary of the class in which serving. During such service, the recalled annuitant shall make contributions to the Fund under section 671.4-1. If a share of the annuity is being paid as a pension to a former spouse under section 673.2, that share shall be deducted from the salary of the recalled annuitant during the period of the recall service. See section 673.2-4. Upon reversion of the annuitant to retired status, any pension payable to a former spouse that was being deducted from the salary of the principal shall again be deducted from the annuity of the principal which shall be determined as follows:

(1) If the recall service lasts less than 1 year, retirement contributions made during the recall period will be refunded under section 673.8-4 and the former annuity will be resumed

at the previous rate adjusted by any cost-of-living increases that became effective during recall service.

(2) If the recall service lasts between 1 and 5 years, the annuitant will be entitled to elect benefits under paragraph (1) above, or receive both the former annuity adjusted by cost-of-living increases and a supplemental annuity computed under section 673 on the basis of service credit and average salary earned during the recall period, irrespective of the number of years of service credit previously earned.

(3) If the recall service lasts 5 years or more, the annuitant will be entitled to recomputation of the annuity as if there had been no previous retirement, or elect benefits under paragraph (1) or (2) above.

(4) An annuitant may receive credit in any computation under paragraph (2) or (3) for any Federal service performed subsequent to the separation upon which the original annuity was computed provided a special contribution is made for such service under section 671.4-3.

(5) An annuitant entitled to a supplemental annuity under paragraph (2) or a recomputed annuity under paragraph (3) is obligated, in the absence of a court order or spousal agreement to the contrary, to have those annuities reduced to provide the benefits described in section 673.1-2 to any spouse or former spouse to whom married during any portion of the recall service. An annuitant must accept a reduction of 10 percent of own supplemental annuity in order to provide a supplemental survivor annuity to a spouse or former spouse. The maximum supplemental survivor annuity equals 55 percent of the supplemental annuity. If, upon reversion to retired status, an annuitant has a former spouse entitled to a pro rata share or some other share of the supplemental survivor annuity, but no spouse, the appropriate share of the supplemental annuity shall be reduced by 10 percent to provide such former spouse a share of the maximum supplemental survivor annuity.

b. Survivor Benefit for Death During Recall Service

(1) If an annuitant entitled to a reduced annuity under section 673.4-2 dies in service after being recalled and is survived by a spouse or former spouse entitled to a survivor annuity based on the service of such annuitant, such survivor anuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with paragraph a. If such death occurs before the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a lump-sum payment consisting of the retirement contributions made by the principal during the recall period will be made pursuant to section 673.8-5. A former spouse is not entitled to any portion of a lump-sum payment made to survivors. If such death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant at any time during a period of recall service shall be entitled to elect, in addition to any other benefits and in lieu of any lump-sum refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 673.4-7a(5) as if the recall service had otherwise terminated.

If the annuitant had completed sufficient recall service to attain eligibility to have own annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under section 673.5 to have the rights of the annuitant redetermined and to receive a survivor annuity computed under sections 673.5-2 or 673.5-3 on the basis of the total service of the annuitant. A pro rata share of any supplemental survivor benefit for a former spouse shall be computed on the basis of the total service during the recall period and months of marriage during such period. If the surviving spouse and surviving former spouse elect different benefits under this paragraph, the former spouse will receive the pro rata share of the benefits the former spouse elects and the spouse will receive the reciprocal share of the benefit the spouse elects.

(2) In the event an annuitant dies during recall service and is survived by a former spouse to whom not married during any period of the recall service, such former spouse will not be entitled to any benefits based on the recall service.

673.4-8 Benefits From Voluntary Contributions

a. The voluntary contribution account is the sum or unrefunded amounts voluntarily contributed to the Fund before January 2, 1977, by any participant or former participant under section 881 of the 1946 Act or a prior provision of law. It earns interest at the rate of 3 percent compounded annually to the date of separation from the Service or, in the case of a participant separated with entitlement to a deferred annuity, to the date the voluntary contribution account is claimed, or to the commencing date fixed for the deferred annuity or to the date the participant becomes eligible for an annuity or a deferred annuity and at the participant's election, shall be:

(1) Returned to the contributor in a lump-sum payment (Form JF-52); or

(2) Used to purchase an additional life annuity; or

(3) Used to purchase an additional life annuity with a cash payment on death to a beneficiary whose name shall be designated in writing by the participant to PER/ER/RET equal to the difference, if any, between the amount that would have been payable under (1) above and the sum of the annuity payments made herein; or

(4) Used to purchase an additional life annuity for the participant and a life annuity commencing on participant's death payable to a beneficiary whose name shall be designated in writing by the participant to PER/ER/RET, with a guaranteed return to the beneficiary or a designated legal representative of an amount equal to the cash payment referred to in paragraph (3) above (Form JF-35).

b. A voluntary contribution account may be paid in lump-sum at any time following receipt of an application from a present or former participant provided the application is filed before payment of any additional annuity. If not paid sooner, the account will be paid when the participant separates from the Service for any reason without entitlement to an annuity or a deferred annuity, or when a former participant dies or otherwise withdraws compulsory contributions to the Fund.

c. If a participant dies in service, or after separation but before retirement, the voluntary contribution account with in-

terest is payable to the person or persons entitled, in the order of precedence indicated in section 673.8-5.

673.5 Survivor Benefits

673.5-1 Kinds of Survivor Benefits

If a participant or former participant dies in active service or after retirement, regular survivor annuities are payable under terms of this section to an eligible surviving spouse, former spouse or child and to a designated beneficiary under section 673.4–6. Also, if all rights to annuity and survivor annuity terminate before exhaustion of the participant's lump-sum credit, a lump-sum payment is made pursuant to section 673.8. In addition to the above, an additional survivor annuity, a supplemental survivor annuity and a survivor annuity based on voluntary contributions made before January 2, 1977, may be payable to an eligible survivor under sections 673.4-5, 673.4-7 and 673.4-8, respectively. If any participant or former participant makes an election, files a spousal agreement or becomes subject to a court order to provide a regular survivor annuity for a spouse or former spouse and does not subsequently become entitled to leave a survivor annuity under these regulations (because of separation from the Service and withdrawal of contributions, death after separation but before commencement of a deferred annuity, or for any other reason), none will be paid and such election, spousal agreement, or court order to provide such survivor annuity will have no force or effect.

673.5-2 Regular Survivor Annuity for a Former Spouse

a. Divorce Before Retirement

If a participant or former participant is divorced before commencement of annuity, any former spouse shall be entitled to a pro rata share of such a principal's maximum regular survivor annuity (based on service performed before the first date the principal becomes eligible for an annuity following the divorce) unless a different amount is elected in a spousal agreement filed with PER/ER/RET within 12 months after the divorce becomes final or at the time of retirement, whichever occurs first, or unless a different amount is specified by a court before the death of the principal. The principal's annuity shall be reduced at the commencing date under section 673.4-2 in order to provide the survivor annuity committed to the former spouse.

b. Divorce After Retirement

In the event an annuitant is divorced after retirement (commencement of annuity), the maximum survivor annuity that may be provided for that former spouse is limited to the amount provided for that person at the time of retirement. Within that limit, the former spouse is entitled to a pro rata share of the participant's maximum survivor benefit (based on service performed before the divorce) unless a different amount was elected in a spousal agreement filed with PER/ER/RET at the time of retirement, or in the case of retirement before February 15, 1981, filed with PER/ER/RET within 12 months after the divorce becomes final, or unless a different amount is specified by a court before the death of the principal. For this purpose, a joint election notarized and filed with PER/ER/RET at the time of retirement is considered a spousal agreement. If the survivor annuity for the former spouse is reduced at the time of the divorce (because the pro rata share or the amount specified in a spousal agreement or court order is less than the amount elected at retirement), the principal's annuity shall be recomputed and paid, effective on the date the survivor benefit is reduced, as if the lower amount had been elected at the outset of retirement.

c. Death or Remarriage of Former Spouse and Transfer of Survivor Benefit to a Spouse

Remarriage below age 60 or death of a former spouse while a principal is alive will disqualify the former spouse for benefits under this section. In the event of such a remarriage or death of a former spouse, the portion of a principal's survivor annuity committed to that person will become available for transfer to any spouse. If such a remarriage or death of the former spouse occurs after the principal's annuity commences, any reduction in the principal's annuity for that former spouse will be discontinued effective at the beginning of the first month following the remarriage or death unless the annuitant elects to provide or to increase a survivor benefit for a spouse. Such an election may be made within 1 year after the annuitant receives notice of the remarriage or death of the former spouse.

The Department (PER/ER/RET) and the annuitant shall each notify the other promptly whenever either receives independent notice of such a remarriage or death. If an election to transfer survivor benefits to a spouse is not made by the annuitant, the annuity will be recomputed and paid as if there had been no reduction for the discontinued survivor benefit. If an annuity is so recomputed and an election is subsequently made to designate as beneficiary a spouse to whom married for at least 1 year at the time the election is made, the principal's annuity shall be restored retroactively to its former, lower rate and then adjusted by cost-of-living increases that have occurred since the date of the first recomputation. If an election is made for a spouse when the marriage has not yet lasted a year, the procedures in section 673.4-4 shall be followed.

d. Amount of Survivor Annuity

The amount of a regular survivor annuity is determined under section 673.5-3c.

e. Special Rules for Election of Survivor Annuity for a Person Who is a Former Spouse on February 15, 1981

(1) Any participant, or former participant eligible for a deferred annuity which has not yet commenced, who, on February 15, 1981, had a former spouse, may at any time before commencement of annuity, elect, with the consent of any spouse to whom married at the time of the election, to receive a reduced annuity and provide a regular survivor annuity for such former spouse. Such survivor annuity shall be limited by section 673.4-2b. Any election under this paragraph for a former spouse will reduce the amount of any regular survivor annuity that may subsequently be provided for any spouse or other former spouse.

(2) Any former participant in receipt of an annuity who had a former spouse on February 15, 1981 and who had not committed own entire annuity as a base for a regular survivor annuity for a spouse or any other former spouse, could, before December 31, 1982, designate any portion of the un-

committed base as the base for a regular survivor annuity for such former spouse.

(3) The annuity of a former participant making an election under this paragraph shall be reduced under section 673.4-2a effective February 15, 1981, or from its commencing date if later.

(4) An election under this paragraph shall be made by filing a spousal agreement with PER/ER/RET under section 671.9. A spousal agreement to provide a regular survivor annuity under this paragraph for a former spouse may be revoked or amended, after its acceptance by PER/ER/RET as in accordance with the Act and these regulations, only by agreement of the parties up to the last day allowed by this paragraph for filing such an agreement. Thereafter, it is irrevocable. If a participant dies in service after having filed a valid election under this section, a survivor annuity will be paid to an eligible former surviving spouse in accordance with the terms of the election.

673.5-3 Regular Survivor Annuity For a Spouse

a. In the absence of a joint election or a spousal agreement to the contrary, a participant or former participant who is separated from active service on or after February 15, 1981, who is married at the commencement of own annuity shall provide a regular survivor annuity for a spouse under section 673.4-2 equal to the maximum amount that remains available under limitations stated in paragraph b of that section after allowing for any commitment of a regular survivor annuity for a former spouse who has not remarried before age 60 and who is alive on the date the former participant becomes eligible for an annuity.

b. A regular survivor annuity is also payable to a surviving spouse for whom a principal elected an annuity under sections 673.4-3, 673.4-4, or 673.5-2c following a marriage after commencement of the principal's annuity.

c. The amount of a regular survivor annuity equals 55 percent of the base designated for the benefit at the time the principal's annuity commenced, adjusted by the total percentage of cost-of-living increases under section 673.11 the principal was receiving at death.

d. A survivor annuity is payable to a surviving spouse only if that person was married to the principal at the time of the principal's death or if the spouse became a former spouse under the definition in section 671.2(12).

673.5-4 Procedure in Event a Spouse or Former Spouse is Missing

If a participant or former participant has a spouse or former spouse whose whereabouts are unknown, such participant may elect to reduce or eliminate the share of a regular survivor annuity provided for that person under sections 673.5-2 or 673.5-3 by filing an affidavit with PER/ER/RET stating that the participant's spouse or former spouse is missing and giving full particulars. The information provided shall include the missing person's full name, last known address, date last heard from, circumstances of the disappearance, and a description of the effort that has been made to locate the individual. Thereafter, the participant shall take such additional steps to locate the missing person as may be directed by PER/ER/RET. That office shall also attempt to locate the missing person by sending a letter to the individual's last known address given in the Department's files, to the address given on the affidavit, and, if a Social Security number is known, to the Social Security Administration for forwarding. The election and affidavit may be filed at any time before commencement of annuity. It must remain on file with PER/ER/RET for at least 1 year before being given irrevocable effect by the Department. If the annuity to the former participant becomes effective before the expiration of this 1 year period, the annuity shall be computed and paid without reference to the election filed under this section. Following this 1-year period, or at the commencement of annuity, if later, if the missing person has not been located, the affidavit may be reaffirmed by the participant, after which an election by the participant to reduce or eliminate the share of regular survivor annuity for the missing person shall be given irrevocable effect by the Department. If the annuity to the former participant has commenced, it shall be recomputed and paid retroactively to give effect to any election made under this section.

673.5-5 Commencement, Termination, and Adjustment of Annuities

a. An annuity payable from the Fund to a surviving spouse or former spouse begins on the day after the participant or annuitant dies and stops on the last day of the month before the survivor's (1) remarriage before age 60, or (b) death. If a survivor annuity is terminated because of remarriage, the annuity is restored at the same rate effective on the date such remarriage is terminated, provided any lump-sum paid upon termination of the annuity is returned to the Fund. The termination of a surviving spouse annuity due to remarriage does not apply to a survivor annuitant who is a surviving spouse of a participant who died in service or retired before October 1, 1976, unless elected following a marriage after retirement under circumstances described in section 673.4-3 or 673.4-4.

b. A surviving spouse or former spouse shall not become entitled to a survivor annuity or to the restoration or a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which entitled under this or any other retirement system for Government employees. (For this purpose, neither the Social Security system nor the military retirement system is considered a retirement system for Government employees.) This restriction does not apply to a survivor annuitant who is a surviving spouse of a participant who died in service or retired before October 1, 1976, unless the survivor annuity was elected under circumstances described in section 673.4-3 or 673.4-4.

c. A child's annuity begins on the day after the participant dies, or if a child is not then qualified, on the first day of the month in which the child becomes eligible. A child's annuity shall terminate on the last day of the month which precedes the month in which eligibility ceases.

d. Regular and supplemental survivor annuities to a spouse or former spouse of an annuitant described in section 673.4-2, 673.4-3, and 673.4-7 and survivor annuities to designated beneficiaries described in section 673.4-6 are increased from their effective date by the cumulative percentage of cost-of-living increases the annuitant was receiving under section 673.11 at death. The dollar amounts specified in the Act for survivor annuities to children of participants and annuitants are increased from the effective date of the

annuity by the cumulative percentage of all cost-of-living increases that have occurred under 5 U.S.C. 8340 since October 31, 1969, as explained in section 673.5-7. All annuities payable to survivors on the date a cost-of-living adjustment becomes effective under section 673.11 are increased by that percentage except (1) the first increase under section 673.11 to a surviving spouse of a participant who dies in service shall be pro rated as described in section 673.11d, (2) annuities based on voluntary contributions described under section 673.4-8, and (3) additional survivor annuities under section 673.4-5 when the spousal agreement authorizing the annuity makes no provision for cost-of-living increases.

e. The annuity of survivors becomes effective as specified in this section but is not paid until the survivor submits an application, Form JF-38, Application for Death Benefits, Exhibit 673.5-5e, supported by such proof as may be required, for example, death, marriage, and/or divorce certificates. In the event that such an application with supporting documentation is not submitted during an otherwise eligible beneficiary's lifetime, no annuity is due or payable to the beneficiary's estate.

673.5-6 Death During Active Duty

a. Annuity for Surviving Former Spouse

In the event a participant dies before separation from the Service and leaves a former spouse, such former spouse is entitled to a regular survivor annuity under section 673.5-2 computed as if the participant had retired on the date of death unless a court order or spousal agreement is on file in the Department waiving such entitlement or providing for some other computation, or unless the former spouse has been found missing and an election filed under the procedures of section 673.5–4 waiving a survivor benefit for that person. Any assumed service authorized to be used under paragraph b in computing the annuity for a surviving spouse may not be counted as "years of marriage" when determining whether the previous spouse qualifies as a "former spouse" under the definition in section 671.2(12) or when computing the pro rata share under section 671.2(20). A former spouse is entitled to an additional survivor annuity under section 673.4-5 provided death occurs on or after the effective date of a spousal agreement providing for the additional annuity.

b. Annuity for Surviving Spouse

If a participant who has at least 18 months of service credit (excluding military and naval service) toward retirement under the System dies before separation from the Service, and is survived by a spouse as defined in section 671.2(23), such survivor shall be entitled to an annuity equal to 55 percent of the annuity computed under section 673.3-1 less any annuity payable to a former spouse under paragraph a. If the participant had less than 3 years of creditable civilian service at the time of death, the survivor annuity is computed on the basis of the average salary for the entire period of such service. If, at time of death, the participant had less than 20 years of creditable service, the annuity shall be computed on the assumption that the participant has had 20 years of service, but such additional service credit shall in no case exceed the difference between the participant's age on the date of death and age 65. A spouse is entitled to an additional survivor annuity under section 673.4-5 provided death occurs on or after the effective date of a spousal agreement providing for the additional annuity.

c. Annuity for a Child or Children

If a participant described in paragraph b is survived by a child or children, each surviving child is entitled to an annuity as described in section 673.5-7.

d. Annuity Changes

Annuities based on a death in service are subject to the provisions of section 673.5-5 governing commencement, adjustment, termination, and resumption of annuities.

673.5-7 Annuity Payable to Surviving Child or Children

a. Statutory Rates

If a participant who has at least 18 months of service (excluding military and naval service) credit under the System dies in service, or if an annuitant who was a former participant dies, annuities are payable to a surviving child or children, as defined in section 671.2(6) as follows:

(1) **When Survived by Spouse and Child or Children.** If a principal is survived by a wife or husband and by a child or children, in addition to any other annuity, there shall be paid to or on behalf of each child an annuity equal to the smaller of:

(a) $900;

(b) $2,700 divided by the number of children—adjusted under paragraph b.

(2) **When Survived by a Child or Children But No Spouse.** If the principal is not survived by a wife or husband, but by a child or children each surviving child shall be paid an annuity equal to the smaller of:

(a) $1,080;

(b) $3,240 divided by the number of children—adjusted under paragraph b.

b. Adjusted Rates

In order to reflect cost-of-living increases, the amounts referred to in paragraphs (1) and (2) above are increased from the commencing date of the annuity to each child by the cumulative percentage of all cost-of-living increases that have occurred under 5 U.S.C. 8340 since October 31, 1969. The commencing rate of annuity paid to surviving children whose annuities commenced on recent dates are shown in the table in subchapter S17-3 of Appendix A of section 675.

c. Recomputation of Annuity for Child or Children

If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a suriving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from the date as though the annuities to all currently eligible children in the family were then being initiated.

673.5-8 Bar Against Concurrent Payment Under This Act and the Workers' Compensation Act

Except as stated below, survivor annuities and survivors' compensation for work injuries under 5 U.S.C. 8102 are not

payable concurrently if both are based on the death of the same employee. A survivor entitled to both must elect which of the two benefits the survivor prefers. Should all eligible survivors of a deceased employee elect to receive the compensation benefit rather than the survivor annuity, their rights to the latter are terminated and, if the lump-sum credit has not been exhausted, a lump-sum payment will become due under section 673.8. The one exception to this rule occurs when a widow or widower is being paid the balance of a scheduled compensation award under 5 U.S.C. 8107 due the deceased employee. If so, the widow or widower may receive the survivor annuity and compensation award concurrently.

673.6 Minimum Annuity

a. The monthly rate of an annuity payable to an annuitant other than a child shall not be less than the smallest primary insurance amount (including cost-of-living increases added to that amount) authorized to be paid under Title II of the Social Security Act, chapter 7, subchapter II, Title 42 of the U.S. Code.

b. The monthly rate of an annuity payable to a surviving child shall not be less than the amount payable to a survivor under paragraph a or 3 times such amount divided by the number of surviving children in any family eligible for an annuity, whichever is the lesser.

c. Paragraphs a and b above will not apply to an annuitant or a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), a pension, veterans' compensation, or any other periodic payment of a similar nature, when such payments are equal to or greater than the minimum payment.

673.7 Employment in a Government Agency

(See sections 125.5-3 and 673.2-4.)

673.8 Lump-Sum Payment

673.8-1 Lump-Sum Credit

"Lump-sum credit" is the compulsory and special contributions to a participant's or former participant's credit in the Fund for the participant's first 35 years of service (see section 673.9 for treatment of contributions after 35 years) plus interest thereon computed from the midpoint of each service period and compounded at four percent annually to the date of separation or December 31, 1976, whichever is earlier, and after such date, for a participant who separates from the Service after completing at least 1 year of service (exclusive of military and naval service) and before completing 5 years of such service, at the rate of three percent annually to the date of separation. Interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from the annuitant for recall service or other service performed after the date of separation which forms the basis for annuity.

673.8-2 Share Payable to a Former Spouse

A former spouse of a former participant is entitled to a pro rata share of 50 percent of any lump-sum payment authorized to be paid by section 673.8 to a former participant who separated from the Service on or after February 15, 1981—including payments to another retirement system on behalf of a former participant—unless otherwise directed by a court or a spousal agreement.

673.8-3 Payment to Former Participant

Whenever a participant becomes separated from the Service without eligibility for an immediate or deferred annuity under section 672, the lump-sum credit shall be paid to the participant. See section 672.5 for application procedure.

673.8-4 Refund After Recall Service

Whenever a participant becomes separated from the Service following a period of recall service without becoming eligible for or electing a supplemental or recomputed annuity under section 673.4-7, the annuitant's compulsory contributions to the Fund for such service together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned.

673.8-5 Payment After Death of Principal

If a participant or former participant dies and no claim for annuity is payable, the lump-sum credit is paid in the order of precedence stated below. If all Foreign Service annuity rights based on the Service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference is paid in the following order of precedence after establishment of a valid claim:

a. To the surviving beneficiary or surviving beneficiaries last designated by the participant or annuitant (hereafter: principal) before or after retirement in a signed and witnessed statement received by PER/ER/RET before the principal's death. A designation change or cancellation of beneficiary in a will or other document not so executed and received shall have no force or effect;

b. To the surviving wife or husband of the principal;

c. To the child or children of such principal (including adopted and natural children, but not stepchildren) and descendants of deceased children by representation;

d. To the parents of such principal or their survivors;

e. To the duly appointed executor or administrator of the estate of such principal; or

f. To other next of kin of such principal as may be determined by the Chief, PER/ER/RET to be legally entitled thereto; except that no payment shall be made under this paragraph until after the expiration of 30 days from the death of the principal.

Payment made under this section shall be a bar to recovery by any other person.

673.8-6 Designation of Beneficiary to Receive Foreign Service Contributions

(See also section 673.4–8)

a. A designation should be made only if the participant wishes to name some other person or persons not mentioned in the prescribed order of precedence in section 673.8-5, or wishes to name a mentioned person in a different order or for a different share. Participants should bear in mind that changes in family status without a corresponding change in designation or cancellation of beneficiary may result in a settlement other than that intended.

b. A designation of beneficiary is for refund of compulsory and special contributions made to the Fund under section 671.4, that is, lump-sum payments under this section and refunds under section 673.9. A designation of beneficiary does not affect the right of any person who qualifies to receive survivor annuity benefits.

c. Upon request, participants will be furnished with a blank Form OF-137 (formerly JF-33), Designation of Beneficiary (Exhibit 673.8-6). The following shall apply:

(1) The designation of beneficiary shall be in writing, signed, and witnessed by two persons, and received by the appropriate agency before the death of the participant.

(2) No change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by these regulations shall be recognized. Payment to a designated beneficiary will be made only to one designated by the document witnessed and filed in accordance with these regulations. Payment to the beneficiary so designated shall relieve the Department of liability to any other claimant.

(3) A witness to a designation of beneficiary is ineligible to receive payment as a beneficiary.

(4) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary, unless the participant is restricted under appropriate State law from doing so. If PER/ER/RET is not notified of the existence of any such obligation before payment is made, payment to the beneficiary designated under these regulations relieves the Department of any further responsibility.

673.9 Refund of Contributions for Service in Excess of 35 Years

Amounts deducted and withheld from basic salary of a participant from the beginning of the first pay period after the participant has completed 35 years of service, excluding unused sick leave, together with interest on the amount at the rate of three percent a year compounded annually from the date of the deduction to the date of retirement or death shall be applied toward any special contribution due under section 671.4-3, and any balance not so required is refunded in a lump-sum to the participant after separation or, in the event of a death in service, to a beneficiary in the order of precedence specified in section 673.8-5.

673.10 Offenses Barring Annuity Payments

a. Sections 8311-8322 of title 5, U.S. Code, prohibit payment of annuity to employees and to their survivors where such employees are convicted of certain Federal offenses cited, or commit certain actions enumerated therein, or remain outside the United States for more than 1 year in order to avoid prosecution under the above cited sections.

b. Section 610(b) of the Act bars payment of annuity to a participant separated from the Service in whole or in part on the grounds of disloyalty to the United States.

673.11 Cost-of-Living Increases

a. Unless otherwise provided by law, cost-of-living increases are granted once a year, effective March 1, to recognize any increase in the Consumer Price Index (CPI - all items—U.S. city average) published monthly by the Bureau of Labor Statistics, Department of Labor. If the CPI for December of any year shows a rise over the CPI for the December of the previous year, the following March 1 increase (reflected in checks mailed about April 1) will equal the percentage in the CPI.

b. Each percentage change in the CPI will be adjusted to the nearest one-tenth of one percent. If at any time there is no change or if the percentage represents a drop in the CPI, there will be no change in the adjustment of annuities.

c. The monthly installment of annuity adjustment under this section is fixed at the nearest dollar, except such installment shall, after adjustment, reflect an increase of at least $1.

d. Each annuity payable to a former participant (except an annuity based on voluntary contributions) on the date an increase becomes effective under this section is increased by that percentage except the first increase to any former participant shall be equal to the product (adjusted to the nearest 1/10 of 1 percent) of 1/12 of the applicable percent change determined under parts a and b of this section, multiplied by the number of full months for which the annuity was payable from the Fund before the effective date of the increase (counting any portion of a month as a full month). Increases under this section will be applied to annuities of survivors as stated in section 673.5-5d.

674 (Unassigned)

675 CIVIL SERVICE RETIREMENT SYSTEM

(TL:PER-514 2-8-82)
(Uniform State/AID/USIA/Commerce/Agriculture)

675.1 Authority

The original Civil Service retirement law was approved May 22, 1920. This law and the numerous laws which have amended or modified it are listed on pages E-1 through E-13 of the Federal Personnel Manual Supplement 831–1, published as Appendix A (pages 195 through 207) to section 675. The following procedures augment Federal Personnel Manual Supplement 831-1.

675.2 Applicability

Administrative responsibility and internal procedures described in the following material apply to the Departments of State, Agriculture, and Commerce, the Agency for International Development (AID), and the United States Information Agency (USIA). Questions not adequately covered in section 675 and Appendix A should be referred to the Retirement Division (PER/ER/RET) for State; the AID/W Division (M/PM/W) for AID; Retirement and Insurance Branch (MGT/PDR) or Office of Personnel (VOA/P), as appropriate, for USIA; the Personnel Division, Foreign Agricultural Service (PD/FAS) for Agriculture; and the Office of Personnel Administration, Foreign Commercial Service (FCS/OPA) for Commerce.

675.3 Employees Covered

Subchapter S-2 of Appendix A (pages 9 through 11) contains information on coverage for Civil Service personnel. The following U.S. citizen members of the Foreign Service are covered by the Civil Service Retirement System (see section 900 for rules on Civil Service retirement for Foreign Service national employees):

a. Chiefs of mission who are not participants in the Foreign Service Retirement and Disability System (see section 671.1-3); and

b. Members of the Service serving under a noncareer limited appointment for a period in excess of 1 year.

675.4 Employees Excluded

The following U.S. citizen members of the Service are excluded from Civil Service retirement coverage unless employment in an excluded category follows employment subject to the Civil Service Retirement System without a break in service or after a separation from the Service of 3 days or less:

a. Members of the Service serving under an appointment limited to 1 year or less:

b. Consular agents (see section 994.5);

c. Nonfull-time members of the Service without a prearranged regular tour of duty; and

d. Employees paid on a contract or fee basis, except employees who are citizens of the United States who are appointed by a contract between the employees and the Federal employing authority which requires their personal services and who are paid on the basis of units of time.

675.5 Filing Application

675.5-1 Overseas

a. When a member of the Service at a post abroad wishes to apply for optional retirement, the member must fill out SF-2801, Application for Retirement, and submit it to the principal or administrative officer for forwarding to Washington. For State, applications from Foreign Service national employees are forwarded directly to the Payroll and Retirement Accounts Branch (M/COMP/FO/FD/PRA) and from all others to PER/ER/RET. For AID, applications are forwarded directly to the Overseas Division (M/PM/OS). For USIA, applications from Foreign Service national employees are forwarded directly to the Foreign Service National Employee Personnel Staff (MGT/PN) or the Office of Policy and Services (VOA/PS), as appropriate, and for all others to MGT/PDR or VOA/PS, as appropriate. For Agriculture, applications are forwarded directly to PD/FAS. For Commerce, applications are forwarded directly fo FCS/OPA.

b. The responsible officer at the post should render every assistance to the member in completing the application by explaining in detail the types of annuities available, helping to select the type best suited to the member's circumstances, explaining the effect of making deposit or redeposit, and obtaining a statement from the member to accompany the application showing any unverified prior service with other agencies. Questions which cannot be answered by the post should be referred to the appropriate office listed in section 675.2.

675.5-2 In the United States

When a member of the Service in the United States wishes to apply for optional retirement, the member must fill out SF-2801, Application for Retirement, for submission through the administrative or executive officer to PER/ER/RET for State; M/PM/OS for AID; MGT/PDR or VOA/P, as appropriate, for USIA; PD/FAS for Agriculture; and FCS/OPA for Commerce.

End Uniform State/AID/USIA/Commerce/Agriculture Regulations.

676 through 678 (Unassigned)

679 SOCIAL SECURITY COVERAGE

(TL:PER-220 3-21-68)
(Uniform State/AID/USIA)

679.1 General

Social security coverage applies to all employees not subject to the Civil Service Retirement Act or the Foreign Service Act of 1946, as amended, or to another Federal retirement system except:

a. Noncitizens employed outside the boundaries of the United States, the Virgin Islands, the Commonwealth of Puerto Rico, and the territories of Guam and American Samoa, and

b. Employees hired on a temporary basis for emergency work due to fire, storm, earthquake, flood, or similar emergencies. Certain short-term employees other than those indicated under item b will be subject to social security coverage. The appointing officer determines whether coverage under the Social Security Act applies and indicates coverage if applicable on the appointing document. For answers to questions not available in this regulation, employees should consult pamphlets such as "Your Social Security" (OASI-35) or others issued by the Social Security Administration, or such questions may be referred directly to the Social Security Administration, P.O. Box 1756, Baltimore, Maryland 21203.

679.2 Legal Basis and Coverage

a. Title II of the Social Security Act (Public Law 271, 74th Congress), amended by Public Law 724, 81st Congress, provides social security benefits for most Federal employees who are not subject to civil service or to any other Federal retirement system. Public Law 761, 83d Congress, and Public Law 97, 89th Congress, further amended the provisions with reference to Federal employees.

b. The Federal Insurance Contributions Act (FICA) provides for withholding taxes from the salaries of employees subject to the Social Security Act for deposit in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

679.3 Social Security Contributions

Federal old age, survivors and disability insurance benefits are paid for by a contribution (FICA tax) based on the employee's earnings. The employee and the agency pay equal amounts of taxes to the United States Treasury Department regardless of the employee's age and even though the employee may be receiving social security benefits. Taxes are paid through payroll deductions.

Commencing with taxable years ending after 1967, the tax is figured on the first $7,800 of an employee's gross annual salary (including salary plus differential for overseas employees). Under the 1967 amendments, employer and employee each pay at the rate of 4.4 percent for 1968; 4.8 percent for 1969-70; 5.2 percent for 1971-72; and 5.65 percent for 1973-75. The increase is necessary to finance the increased regular benefits and the hospital insurance program (medicare).

679.4 Eligibility for Social Security Benefits

To be eligible for social security benefits an employee must have worked long enough to be "insured" (i.e., eligible for benefits) under the Social Security Act. Under current legislation, an employee cannot become fully insured with less than six quarters (1-1/2 years) of work and he does not need more than 40 quarters (10 years) of coverage to be fully insured. An employee is currently insured if the employee has at least six quarters of coverage within 3 years before the employee dies or becomes eligible for retirement benefits. Exact definitions of the number of quarters an employee must work and how old he must be to be fully insured can be found in the current edition of OASI-35.

679.5 Social Security Benefits

a. Retirement Payments (Old Age Insurance Payments)

Upon reaching the age of 62 a fully insured employee is entitled to monthly retirement payments by filing an application with the Social Security Administration. However, if the employee elects to receive a benefit before age 65, the benefit will be reduced. Monthly payments are also made to dependents in accordance with definitions contained in OASI-35.

b. Survivors Insurance Payments

Monthly insurance payments may be made to members of a deceased employee's family if at the time of death the employee was insured. These payments are subject to the same earnings test as the one for retired employees (section 679.4 and OASI-35). Added eligibility qualifications are defined in OASI-35.

Survivors insurance payments cannot start until an application has been filed with the nearest district office of the Social Security Administration by a member of the deceased employee's family. Persons overseas address inquiries to P.O. Box 1756, Baltimore, Maryland 21203. The application should be filled out promptly inasmuch as back payments cannot be made retroactive for more than 12 months. In addition to monthly payments, a lump-sum payment up to three times the amount of the monthly retirement benefit but not to exceed $255.00 is made to the widower or widow of a fully or currently insured employee if the employee was living with the employee in the same household. Otherwise the lump-sum payment is payable toward burial expenses. (See also 7 FAM 457.1-8.)

c. Disability Insurance Benefits

To be eligible for disability insurance benefits, a disabled person must have social security credit for at least 5 years of work in the 10-year period ending when the person becomes disabled. However, workers who become disabled in 1971 or later will need credit for more than 5 years of work.

679.6 General Provisions Regarding Benefits

a. Amount of Payments

The amount of monthly payments to which an employee and dependents and survivors are entitled depends on the employee's average earnings in covered employment and self-employment up to the time of death, disability or when the employee reaches retirement age, or up to the time of actual retirement, whichever is later. The amounts of these monthly payments will be determined by the Social Security Administration following application for payments.

b. The Effect of Continued Work on Receipt of Benefits

A beneficiary is required to report to the Social Security Administration when beginning work and expects to earn over $1,680 in a year. All earnings from work, whether employment of self-employment, and whether or not covered by social security, must be considered. Investment income need not be considered.

A retired worker, or dependent of a disabled worker, or a survivor, who does not earn more than $1,680 a year, can get benefit checks for all 12 months of the year. A retired worker's dependent who does not earn more than $1,680 a year can get benefits for all the months the worker does. If in any year a beneficiary earns more than $1,680, some or all of the benefits for months before the beneficiary reaches age 72 are withheld. The amount withheld depends on how much yearly earnings exceed $1,680 and in how many months worked.

A person living abroad who receives social security benefits will have them suspended for any month the person is under 72 years of age, during which engaged in gainful employment (or self-employment) on more than 6 days during a calendar month, regardless of the amount earned. See the revised booklet SSA-C609(10-65), Social Security Benefits Outside the United States, for a discussion of this and other reasons for suspension of benefits to payees outside the United States.

c. Events That May Affect Benefits

A variety of changes in the personal, family, or legal status of a beneficiary may affect benefits, and each beneficiary is required to notify the Social Security Administration of the occurrence of such events. Each beneficiary is furnished instructions on what events to report and how to make such reports. The events to be reported are somewhat different if the beneficiary is outside the United States. (See 7 FAM 457.1-2.)

d. Refunds

No refund of social security taxes may be made except when payments have exceeded the tax requirements. Such refund is claimed on the employee's income tax return filed for the year in which the overpayment occurred. Information

concerning a refund of FICA tax should be obtained from the District Director of Internal Revenue.

e. Appeals Rights

If a beneficiary is not satisfied with the Social Security Administration's action on the claim, the beneficiary may request that it be reconsidered; subsequently, the beneficiary may also request a hearing before a hearing examiner of the Bureau of Hearings and Appeals, and a review of the hearing examiner's decision by the Appeals Council. Ultimately, the beneficiary also has the right to bring a civil action in U.S. District Court.

679.7 Social Security Numbers

All U.S. citizen Federal employees must have social security numbers whether or not subject to social security coverage. All non-U.S. citizen employees performing service in the United States and subject to income and social security taxes must also have social security numbers. The number should be shown on Form W-4, Employee's Withholding Exemption Certificate, furnished the office maintaining employee accounts. A person not having a social security account number may obtain one by writing a letter or sending Form SS-5, application for social security number, to the Social Security Administration, P.O. Box 1756, Baltimore, Maryland 21203.

679.8 Report of Deductions

Each employee is furnished a statement of the total amount of earnings subject to FICA deductions and of the FICA deductions made, on Form W-2, Withholding Tax Statement, after the close of the calendar year. In the event of separation during the calendar year, form W-2 should be given the employee not later than 30 days after the last payment of salary is made.

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[1]Note: Section 804(6) of the Act defines "former spouse" with respect to duration of marriage as being married to a participant "for not less than 10 years during periods of service by that participant which are creditable under section 816." The Department interprets this as necessarily implying that the marriage must have covered a period of at least 1 day while the member of the Foreign Service was a participant in the System.

CHAPTER 4

CIVIL SERVICE RETIREMENT

4A. Regulatory Requirements

1. Employee Coverage

All employees are covered by the retirement system except those specifically excluded by law or regulation of the Civil Service Commission (CSC) and those in the AID Foreign Service participating in the Foreign Service Retirement and Disability System of the Department of State.

2. Employees Excluded by CSC Regulation

Attachment 4A contains exclusions by law and regulation of the Civil Service Commission.

3. Retirement Officer

The Chief, Employee Relations Branch, SER/PM, or designee, has been designated the Retirement Officer for AID. This Officer is available for counseling and advising individual employees regarding their rights, benefits, and obligations under the law, giving assistance to claimants and survivors of deceased employees. Any questions on retirement matters should be directed to the Retirement Officer.

4. Certifying Officer

The Controller, or designee, is designated the Certifying Officer for the purpose of certifying individual retirement records and related documents. This Officer is also responsible for the correctness of all data shown on official retirement records.

5. Certificate of Membership

A Certification of Membership in the CSC Retirement System is given to each employee who has no prior service with the Federal Government at the time of appointment in AID. Employees are urged to preserve this record.

6. Definitions

a. An annuitant is a former employee who meets all the requirements for title to an annuity and has filed a claim for it. An employee is also an annuitant even though final administrative action on the claim may not have been taken by the Civil Service Commission prior to death.

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b. An annuity is the annual sum payable to a former employee who has retired.

c. Deferred annuity is an annuity payable to a separated employee which is scheduled to begin when the separated employee reaches age 62.

d. Earned annuity is computed on the basis of the employee's actual service, unused sick leave, and high 3 average pay and, if required, reduced for retirement before age 55 and failure to make a deposit or redeposit.

e. Deductions are the amounts withheld for retirement purposes from the basic pay of an employee subject to the retirement law.

f. Deposit is a sum of money paid into the fund by an employee or survivor to cover a period of service during which deductions were not withheld from pay.

g. High 3 average pay is the largest annual rate resulting from averaging, over any period of 3 consecutive years of creditable service, an employee's rate of basic pay in effect during that period, with each rate weighted by the time it was in effect.

h. Refund is the withdrawal from the Retirement Fund of deductions made from the employee's salary during periods of employment.

i. Redeposit is a sum of money paid into the Retirement Fund by an employee or survivor to cover a period of service during which deductions were withheld but later refunded.

j. Survivor annuitant is a person who is entitled to an annuity based on the service of a deceased employee or annuitant, and who has filed claim therefor.

k. Survivor annuity is the annual sum payable to a survivor annuitant.

7. Retirement Eligibility

a. Minimum Requirements

There are two basic, minimum requirements:

(1) Five years' creditable civilian service, and

(2) Coverage under the law at least 1 year out of the last 2 years prior to separation. This one out of 2-year requirement does not apply to disability retirement.

b. Optional Retirement

An employee can retire optionally and receive an immediate annuity if:

(1) Age 62 has been attained with at least 5 years' civilian service;

(2) Age 60 has been attained with at least 20 years' civilian service;

(3) Age 55 has been attained with at least 30 years' civilian service.

c. Discontinued Service Retirement

(1) An employee who is involuntarily separated from the service is entitled to an immediate annuity if the employee meets minimum requirements and either of the following:

(a) Attainment of age 50 and completion of 20 years creditable service; or

(b) Regardless of age has completed 25 years of creditable service.

(2) A disability annuitant who, before reaching age 60, recovers or is restored to earning capacity and is not reemployed is entitled to immediate annuity if, when disability annuity terminates, the annuitant meets either of the requirements of 4A7c(1)(a) or (b) above; however, the one out of 2-year service requirements need not be met in this case.

(3) If the retiring employee is under age 55, the basic annuity is reduced by one sixth of 1 percent for each full month (2 percent a year), if any, the employee is under age 55. The annuity rate so determined will not be increased when the annuitant reaches age 55.

d. Disability Retirement

An employee can retire on disability, and receive an immediate annuity if:

(1) Employee has completed 5 years of civilian service.

(2) Employee becomes totally disabled for useful and efficient service in assigned position or any other position of same grade or class.

(3) Disease or injury which caused the disability must not be the result of vicious habits, or willful misconduct on part of the employee within the 5-year period immediately prior to becoming disabled.

(4) Application is made by the employee, guardian, AID, or other interested person and filed before separation from the service or within 1 year thereafter. If the application is filed by AID, it must be made before the employee is separated from the service. It cannot be waived regardless of reason for failure to execute the application on time, except for an employee who was mentally incompetent at time of separation or within 1 year thereafter. The CSC may accept the application if filed within 1 year from date person is restored to competency or a guardian is appointed, whichever is earlier.

e. Deferred Retirement

An employee who is separated from the service for any reason, or transferred to a position in which he/she is not under the retirement system, before meeting the requirements for an immediate annuity, is entitled to a deferred annuity to commence at age 62 if he/she meets minimum eligiblility for retirement.

f. Law Enforcement Provisions

An employee can establish eligibility under special retirement provisions applicable to law enforcement personnel. They have the option of voluntary retirement on an immediate annuity at age 50 or over with 20 years of service. Effective January 1, 1978, a law enforcement officer will be mandatorily separated at age 55 if the employee has at least 20 years of law enforcement service. The Administrator is authorized in the public interest, to except employees from mandatory separation until age 60.

8. Creditable Service

With certain exceptions, full-time civilian and military service performed for the Federal Government is creditable service. There are certain exception when full-time credit is not allowed. Details on what constitutes creditable service and what full-time service is not creditable may be obtained from OPT.

9. Voluntary Contributions

An employee who wishes to obtain a larger retirement annuity than is otherwise provided may make voluntary contributions to the Retirement

Fund to purchase additional annuity, subject to certain restrictions. Employees interested in making voluntary contributions should contact *OPT* for detailed information.

10. Deposits and Redeposits to the Fund

Employees who have had creditable civilian service for which deductions were not made for any reason receive credit for this service in the computation of annuity benefits without making a deposit to cover the period of service. If, however, a deposit is not made by the employee or by his/her survivor, or if installment payments are begun and not completed, the annuity otherwise payable is reduced by an amount equal to 10 percent of the balance due and unpaid. If an employee has received a refund of retirement deductions, a redeposit equal to the amount of refund, plus interest, must be made by the employee or his/her survivor or the service will not be credited in the computation of annuity benefits. For this reason it is usually to the employee's benefit to pay the redeposit.

11. Computation of Annuity

For planning purposes only, a good estimate of annuity can be made by using a short cut method if the employee has 10 or more years of creditable service. Take your total number of years of service, subtract 2, then multiply the results by 2. This method provides you the percentage factor that you apply to your highest 3 years average salary. The result is your estimated annual annuity. The result will be very close to the amount computed by the Retirement Officer and CSC using the annuity computation formula. Any one desiring to review the annuity formula may contact the Retirement Officer.

12. Kinds of Death Benefits

Death benefits are of two kinds: survivor annuity and lump-sum payment. Survivor annuities may be payable upon the death of an employee to the spouse and children. A lump-sum benefit may be payable upon the death of an employee if there is no spouse or children entitled to survivor annuity or, if a survivor annuity is payable, after the right of the last person entitled thereto has terminated. Information on conditions to be met by employee and amounts payable may be obtained from the Retirement Officer.

13. Refunds

Regardless of length of service, an employee who is separated, or transferred to a position in which he/she is not under the retirement system may receive a refund of retirement deduction provided:

a. Separation or transfer occurs and application for refund is filed with the CSC at least 31 days before the commencing date of any annuity for which eligible.

b. The employee is not currently employed in a position subject to the CSC deductions or will not be so employed within 31 days from the date of separation on which claim for refund is based.

c. The receipt of the lump-sum credit voids all annuity rights unless the person is later reemployed in a position subject to the retirement system. The services covered by the refund cannot be credited for annuity computation purposes until redeposit is made. It may be to the person's advantage to leave the lump-sum credit in the retirement fund. There is no advantage to doing so for an employee who has less than 5 years of creditable service if there is no contemplated return to Federal service. If, however, the employee has a title to a deferred annuity at age 62, the value of the deferred annuity in most cases will exceed the amount of the lump-sum credit, and upon attaining age 62 and filing for retirement annuity, a survivor-type annuity may be elected. Leaving the lump-sum credit in the retirement fund does not preclude a refund at a later date provided application is filed with the CSC at least 31 days before the commencing date of an annuity. If the former employee dies before attaining age 62, the lump sum is payable as a death benefit.

14. Appeal

An appeal may be made to the CSC from any final action of the Bureau of Retirement, Insurance, and Occupational Health affecting the rights or interests of any person or agency under the law. The appeal must be filed by a claimant or a designated representative.

4B. Procedures

1. Optional Retirement

a. An employee may apply for optional retirement at any time and specify the effective date of separation provided eligibility requirements are met.

b. *The employee fills out and returns to OPT an SF 2801, Application for Retirement, Attachment 4B. The Retirement Officer will provide detailed guidance on types of annuities available and the effect of making deposits and redeposits.*

2. Optional Retirement for Law Enforcement Employees

Each case must establish the required qualifying experience of a hazardous nature. *OPT* is responsible for getting a statement from the employee to accompany the application showing all verified prior service, if any, with other agencies. The procedures outlined in 4B1*b* apply. Legal, regulatory, and procedural requirements are set forth in FPM Supplement 831-1, Subchapter 9. The proposed retirement application is accompanied by a statement from *OPT* attesting that the duties of the position meet the criteria.

3. Discontinued Service Retirement

The procedures contained in 4B1*b* apply in the case of discontinued service retirement.

4. Deferred Retirement

The retirement application should not be filed earlier than the third month before attainment of age 62. At that time, the employee may obtain the application either from the Agency or from the Civil Service Commission.

5. Disability Retirement Filed by the Employee

a. The employee should apply for disability retirement. It may be made by a guardian or other interested person. If made by a guardian or other interested person, it must be filed before separation or within 1 year thereafter. This time limit applies to separated employees who elect to receive compensation for work injuries.

b. *OPT* will counsel and assist the employee and/or guardian in completing the SF 2801. If capable of working, the employee is kept in a work status until notified by the Civil Service Commission of its decision on the disability application.

c. A statement from the employee's superior will be completed on the SF 2801A, Superior Officer's Statement, Attachment 4C.

d. A complete medical report of the employee's attending physician is required in every case of disability retirement. This information is obtained by the employee on form SF 2801-B, Physician's Statement,

Attachment 4D. If the employee does not wish to use this form, a statement on the physician's stationery is acceptable provided it fully describes all physical signs of existing disease or injury and states the physician's opinion of the degree to which the applicant is disabled for useful and efficient service. The physician should give his/her opinion of the date on which disability began and state whether in his/her opinion the disease is due to vicious habits, or willful misconduct. The report should be submitted by the physician direct to the Agency in the envelope provided for this purpose.

e. If the employee has been hospitalized for an ailment or disease related to the disability within 2 years immediately preceding the date of disability retirement, he/she is required to have completed form SF 2801-D, Request for Medical Records, Attachment 4E. The hospital should forward the report direct to the Agency in the envelope provided for this purpose.

f. OPT Representatives are available to give assistance to employees in completing the application, obtaining the necessary statement from the employee's supervisor, explaining the requirements of a physician's statement, and getting a statement from the employee to accompany the application showing any unverified prior service. The Retirement Officer is available to assist the employee in selecting the type of annuity best suited to the circumstances, and explaining the effect of making deposits and redeposits.

g. If the employee is insured under the Federal Government Life Insurance Program, and Federal Health Benefits Program, and retires with less than 12 years of service, the employee may retain coverage as an annuitant only if retirement is because of disability. A totally disabled employee with less than 12 years of service but eligible for optional retirement should apply for disability retirement in order to assure retention of these coverages.

h. A ruling by the CSC that an employee is totally disabled applies only to the ability of the employee to perform the duties of the position held or a comparable position.

i. Any action to change the employment or leave status while the retirement application is pending is subject to job protection regulations. If the CSC denies the application for disability retirement, the employee may appeal such decision to the CSC.

j. If the employee has been separated more than 30 days, the retirement application may be sent direct to the Bureau of Retirement, Insurance, and Occupational Health, Civil Service Commission, Washington, D.C. 20415. It must be accompanied by a statement of the attending physician.

k. Unless the employee already has been separated, the CSC notifies AID of its action to allow or disallow a claim. If the disability retirement is allowed, AID takes one of the following actions:

(1) If the employee is on annual leave or leave without pay, it separates him/her as of the date the notice was received.

(2) If the employee is on sick leave, it separates him/her as of the date the leave expires.

(3) If the employee is in duty status, grant him/her any sick leave to which entitled for which the employee may apply, and separates him/her as of the date the leave expires.

6. Disability Retirement Filed by AID

a. A preliminary decision must be made by *OPT*, in consultation with the supervisor, that performance, attendance, or behavior is below the level of acceptability and that a health problem exists which could account for the deficiencies. *OPT* must establish in record evidence a prima facie case that the service of the employee is not useful and efficient and that apparent cause is a mental or physical illness or injury not of a transient nature. The evidence shall be such that it warrants consideration of the removal of the employee from the service under adverse action procedures, if medical findings do not support disability retirement.

b. When an employee refuses to apply and *OPT* considers that deficiencies in an employee's service were caused by a possible health problem, it may file the application for disability retirement. If the application is made by *OPT*, it must be filed with the CSC before the employee is separated.

c. *OPT* conducts a counseling session with the employee to discuss various alternatives open before any formal action is started. If the counseling session has not made an alternative course of action possible, the employee may be asked to report for a fitness for duty medical examination. A written notice ordering the employee to take the examination is issued by *OPT* and given to the employee. It tells the employee the reasons for the examination, right to be represented, and instructions for selecting a medical examiner, if desired.

d. An employee who objects to being examined and is unwilling to select a different medical examiner may be given an adverse action for refusing to report for an examination so directed.

e. All available information pertinent to the possible health problem of the employee is presented to the medical examiner, to the employee, or a designated physician selected by the employee in writing. If further examinations are required, they must be recommended by the medical officer.

f. If the supervisor or other manager familiar with the performance of the employee decides that the behavior of the employee has been such as to raise the possibility that the illness is mental or emotional, or if a physical examination was made and the medical officer recommends a psychiatric examination:

(1) An employee may not be ordered to report for a psychiatric examination unless a majority of a panel of at least three AID officials agree that the circumstances warrant such action.

(2) If a majority of the AID panel agrees that a psychiatric examination will be required, such an examination will be ordered as follows:

(a) If a psychiatric examination is to be ordered, appointment of a representative is required. An employee may name a representative himself/herself at any time, but if he/she fails to name one voluntarily, *OPT* should urge the employee to do so before ordering a fitness for duty psychiatric examination and offer the employee assistance by naming the kinds of persons who make good representatives. Otherwise, *OPT* will appoint a representative who is given copies of all notices, determinations, or other written communications issued to the employee. *OPT* may select a representative who is a family member, union officer, veterans service officer, or if no other representative is available, an employee of AID.

(b) A written notice to the employee is prepared by *OPT* ordering the psychiatric examination.

(c) If the employee objects to the medical examiner named by *OPT*, he/she will be asked to submit the names of three to five board certified psychiatrists to whom he/she would be willing to report. *OPT* then selects a medical examiner from the list and arranges an examination.

(d) All available information pertinent to the possible health problem of the employee is presented to the medical examiner to serve as background for the examination. *OPT* will make available only to a licensed physician, designated in writing for that purpose by the employee or the representative, a full report of the medical evidence in the file including a copy of the reported behavior irregularities or manifestations of unsatisfactory service.

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(e) If the employee refuses to cooperate altogether, *OPT* must document all instances of alleged behavioral deficiencies on which the decision to order a psychiatric examination was based. This lay evidence may serve as the basis for an AID filed application for disability retirement in the case of an emotionally disturbed employee.

g. The employee remains in an active duty status pending decision of the Bureau of Retirement, Insurance, and Occupational Health on an AID application for disability retirement, except that *OPT* may place an employee on leave with consent or without consent when the circumstances are such that retention in an active duty status may result in damage to Goverment property; may be detrimental to the interests of the Government; or injurious to the employee, fellow workers, or the general public. If the leave account of the employee is or becomes exhausted, any suspension or involuntary leave without pay is effected in accordance with law and regulation.

h. On the basis of all available evidence, *OPT* is required to decide whether deficiencies in the services of the employee are caused by illness or injury. If not, adverse action procedures may be instituted if warranted. If it is decided that the deficiencies in the service of the employee are established and are caused by disease or injury, *OPT* must notify the employee in writing of this tentative determination that he/she meets all requirements to be retired on disability.

i. If the employee answers the notice of tentative determination, all documentary evidence offered by the employee or representative must be received, considered, and included in the case file. An oral reply to the designated AID official must be summarized in writing and included in the case file. An additional copy, approved or supplemented by the employee, must also be included in the case file. The employee may amend his/her copy of the summary or submit corrections or supplementations within 5 calendar days after receipt of the copy of the summary. The designated official may make or recommend the decision on whether to file an application for the employee's retirement on disability, subject to the following:

(1) No employee will be retired on disability when the application is filed by *OPT* without a certification that there is no suitable position vacant for which the employee is qualified, and which he/she is willing to accept in lieu of retirement.

(2) *OPT* records its opinion on whether the deficiencies in the employee's service are caused by disease or injury not due to

vicious habits, or willful misconduct within the preceding 5 years and gives notice to the employee, in writing, informing the employee of statement of findings and conclusions, of decision on reassignment, or that disability retirement application has been filed.

j. If required procedures are not followed, the CSC may return the file to *OPT* and employee is informed if the case is returned for this reason. Otherwise, the CSC notifies the employee and *OPT* of receipt of the application. This notice also informs the employee of right to an examination without cost, right to submit medical or lay evidence on medical condition or job performance; and if required, the necessity of an examination to obtain further evidence.

k. The necessity of an examination is to obtain further evidence. If the employee refuses to report for an examination and the evidence on file is not sufficient for a decision, the case may be returned for such action as circumstances warrant.

l. When all evidence is evaluated, the CSC makes its decision and notifies both the employee and *OPT*. The party adversely affected may appeal within 15 days and may request a hearing. The notice of decision gives full instructions on how to appeal the decision and to request a hearing.

m. Unless the employee already has been separated, the CSC notifies *OPT* of the action on the claim. If disability retirement is disallowed, *OPT* is notified. If disability retirement is allowed, procedures cited in 4B6l are followed.

7. Election of Type of Annuity

The election of the type of annuity desired is indicated by the retiring employee on the retirement application at the time of retirement. If an application for disability of an employee is filed by *OPT*, the election of the type of annuity is not completed.

8. Election of Reduced Annuity

a. An election of reduced annuity with survivor benefit to spouse or of full annuity without survivor benefit can be made by an employee who is married at the time of retirement. However if the annuitant elects reduced annuity, it will be changed when the marriage of the annuitant is dissolved due to death, divorce, or annulment. The annuity will be recomputed to eliminate the reduction for survivor benefits beginning with the month following the one in which the marriage was dissolved, and for each full month thereafter during which he or she is not married.

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b. If and when the annuitant again marries, the annuity will be reduced by the same percentage reductions which were in effect at the time of retirement, beginning the first day of the month in which the remarriage occurred. The new spouse will become qualified for the same survivor protection as the former spouse after the marriage has been in effect for 1 year, or after a child is born of the marriage, whichever occurs first.

c. The annuitant, upon remarriage cannot elect continuation of the single-life unreduced annuity.

d. Annuitants who are unmarried at the time of retirement and who subsequently marry (or remarry) may elect a reduced annuity with benefits to surviving spouse.

9. Applying for Retirement Annuity When Receiving Compensation for Work Injuries

Even though the employee elects to receive compensation for work injuries, the employee should also apply for an annuity upon separation. The annuity payment is suspended during the period he/she is receiving workmen's compensation. Only if he/she applies and elects a survivor type annuity can he/she provide the continuity of survivorship protection he/she had under the retirement system. The employee also protects annuity rights should compensation for work injuries be discontinued. If the employee desires to apply for a refund, he/she may do so; however, the employee forfeits right to the annuity.

10. Filing an Appeal

a. Disability Retirement

(1) An employee or the Agency may request the Director, Bureau of Retirement, Insurance, and Occupational Health, to reconsider the decision on an application for disability retirement. The request for reconsideration must be submitted within 15 days of receipt of the notice of decision.

(2) The Director, Bureau of Retirement, Insurance, and Occupational Health, will review the file, including any additional material submitted, and, if necessary, arrange for a new medical examination, and allow or disallow the application. The employee or the Agency then may appeal this decision to the Federal Employee Appeals Authority. (See Handbook 30, Chapter 7, for procedures to be followed in filing an appeal with FEAA.) The appeal must be submitted within 15 days of receipt of the decision on the request for reconsideration.

(3) Upon receipt of an appeal, the Federal Employee Appeals Authority will review the case and schedule a hearing, if desired by the appellant. Where there is a conflict in medical opinions, the FEAA may send the available medical evidence to an impartial medical consultant. When the evidence is complete, a decision will be rendered.

(4) See Handbook 30, Chapter 7, for procedures to be followed when asking the Appeals Review Board for reconsideration of an FEAA decision.

b. Other Types of Retirement

(1) Appeals of any final action of the Bureau of Retirement, Insurance and Occupational Health, affecting the rights or interests of any person or agency under the law must be filed directly with the Appeals Review Board, U.S. Civil Service Commission, Washington, D.C. 20415. The appeal must contain the name and post office address of the appellant, claim number, the date and substance of the action from which the appeal is taken, full reasons for the appeal, and any documentary evidence in support thereof. Except as discussed below, an appeal must be filed within 6 months from the date the CSC mailed notice of its final action.

(2) When an application for annuity is denied because of offenses barring annuity payments, the claimant must file an appeal within 30 calendar days from the date of the initial decision after hearing, or after decision without a hearing by the Bureau of Reitrement, Insurance, and Occupational Health.

11. Recognition at Time of Retirement

a. Retirement Plaque

A retirement plaque should be presented to each retiring employee in the presence of suitable ranking staff and the retiring employee's colleagues. The plaques are requisitioned from SER/MO on AID 5-7, Supplies/Equipment Services Requisition. The name of the retiring employee, retirement date, and length of service, computed to the closest year by the Foreign Service Personnel Division (OPT) or the Civil Service Personnel Division (OPT/CSP) for Washington employees and the Mission Executive Officer for overseas employees should be provided. The Mission should submit the requisition for the plaque at the time the SF 2801, Application for Retirement, is pouched to AID/W. The requisition should clearly indicate whether or not the plaque is to be returned to the Mission for presentation or mailed directly to the employee's separation residence.

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b. Commendation

In addition to the plaque, it may be desirable to present a letter of commendation. It is the responsibility of the following officials, or their designees, to sign and present the letter.

(1) The Administrator for Section 624(a) statutory officers; 625(b) supergrade employees; 631(b) Mission Chiefs, Deputy Mission Chiefs, and AID Representatives; and FSR-2 and FSR-1 Foreign Service employees.

(2) Mission Chiefs, and AID Representatives for employees retiring at post.

(3) Assistant Administrators and Heads of Offices or Staffs for all other employees.

Subchapter S2. Coverage

S2-1. EMPLOYEES COVERED

All employees are covered by the retirement system except those specifically excluded by law or by regulations of the Civil Service Commission.[1] Except for congressional employees who must affirmatively elect coverage, the question of whether an employee is subject to the system is governed by the appointment itself, and the employee does not have a choice of retirement coverage. When the appointing officer has a choice of the type of appointment he will make, he may ascertain the wishes of the prospective appointee. Failure to consult the appointee or to be guided by his wishes does not constitute an error which will warrant correction of the appointment action.

S2-2. EXCLUSIONS BY LAW

a. The following persons are excluded from coverage by law:

(1) The President.

(2) Judges of the United States as defined under section 451 of title 28 of the United States Code.

(3) Employees subject to another Government retirement system.

(4) Temporary employees of the Administrative Office of the United States Courts, and of the United States Courts except the Supreme Court.

(5) Construction employees or any other temporary, part-time, or intermittent employees of the Tennessee Valley Authority.

(6) Certain interns, student nurses, and other student employees of Government hospitals.

(7) Teachers in dependents' schools of the Department of Defense in overseas areas, as regards Federal employment, other than teaching, performed during a recess period between two school years.[2]

S2-3. EXCLUSIONS BY REGULATION

Unless covered by one of the exceptions listed in section S2-4, the following employees in the executive branch of the Federal Government are excluded from coverage by regulation:

(1) Employees serving under appointments limited to one year or less.

(2) Nonfull-time employees without a prearranged regular tour of duty.

(3) Employees whose salary, pay, or compensation on an annual basis is $12 a year or less.

(4) Member or patient employees in Government hospitals or homes.

(5) Employees paid on a contract or fee basis, except employees who are citizens of the United States who are appointed by a contract between the employees and the Federal employing authority which requires their personal services and are paid on the basis of units of time.[3]

(6) Employees paid on a piecework basis, except those whose work schedule provides for regular or full-time service.

(7) Intermittent alien employees engaged on work outside the continental limits of the United States.

---

[1] The Architect of the Capitol, the Librarian of Congress, and the Director or Acting Director of the United States Botanic Garden are authorized to exclude from coverage temporary employees in their agencies.

[2] This partial exclusion was added by the Act of July 17, 1959, Public Law 86-91. The teachers involved generally have retirement coverage based on their teaching service, which coverage they retain while in nonpay status during the summer recess periods. Under the cited law, the retirement rights acquired as teacher are not enhanced or diminished by the temporary nonteaching summer employment.

[3] Effective for employment beginning on or after July 1, 1967, the regulations were amended to extend coverage to those persons who are Federal employees in every sense.

(8) Employees serving under temporary appointments pending establishment of registers, or pending final determination of eligibility for permanent appointment.

(9) Acting postmasters, clerks in fourth-class post offices, substitute rural carriers, and special delivery messengers at second-, third-, and fourth-class post offices.

(10) Consular agents appointed under authority of section 551 of the Foreign Service Act of 1946, approved August 13, 1946, (Public Law 79–724).

(11) Employees serving under emergency-indefinite appointments not exceeding five years.

(12) United States citizens given overseas limited appointments.

(13) Employees serving under nonpermanent appointments made pursuant to section 1 of Executive Order 10180 of November 13, 1950.

(14) Employees serving under nonpermanent appointments, designated as indefinite, made after January 23, 1955, the effective date of the repeal of Executive Order 10180.

(15) Employees serving under term appointments.

(16) Temporary employees of the Census Bureau employed under temporary limited appointments exceeding one year.

S2–4. EXCEPTIONS TO EXCLUSIONS

a. **Exceptions to exclusions by regulation.** There are no exceptions to the exclusions by law. There are, however, certain exceptions to the executive branch exclusions-by-regulation as listed below. An employee automatically acquires or retains retirement coverage under any of the following conditions:

(1) Employment in an excluded category follows employment subject to the retirement system without a break in service or after a separation from the service of three days or less, except for an alien employee whose duty station is located in a foreign country,[1]

[1] Effective October 1, 1965, the regulations are amended to permit agencies flexibility in covering alien employees under the host government's social security system.

(2) The employee is granted competitive civil service status under legislation, Executive order, or the civil service rules and regulations, while he is serving in a position in the competitive service,

(3) The employee previously had a competitive civil service status and this status is restored to him by action of reinstatement, or

(4) The employee is granted merit status under subchapter E, chapter I, title 35, Code of Federal Regulations. (This coverage could not attach before June 11, 1960, the effective date of this exception.)

b. **Career or career-conditional appointment.** An employee given a career or career-conditional appointment when he enters Federal service automatically acquires retirement status. This status is similarly acquired by an excluded employee whose appointment is changed to career or career-conditional. This is so even though he may serve under conditions which would ordinarily exclude him from retirement coverage, such as nonfull-time employment without a prearranged regular tour of duty. The retirement coverage attaches because the employee acquires a competitive status under the career or career-conditional appointment. The person has no right of election to acquire or retain social security coverage.

S2–5. COVERAGE PROSPECTIVE

a. If an employee is not accorded retirement coverage upon appointment, but later is granted competitive civil service status in a competitive position, or the status is restored to him by action of reinstatement, retirement coverage attaches as of the date he acquires or reacquires competitive status. The action is prospective only and retirement deductions are made beginning on the day the employee acquires coverage under the Retirement System.

b. When the employing office discovers that through error it has failed to withhold the required retirement deductions, for any reason whatsoever, from an employee's pay for any period of service, that service will be considered as any other nondeduction service as explained

in subchapter S4–1a of this supplement. Retroactive deductions should not be made.

S2–6. DISTRICT OF COLUMBIA GOVERNMENT

a. **Exclusions.** (1) Persons appointed on or after August 13, 1960, as members of the District of Columbia examining and licensing boards and commissions listed below are excluded by regulation:

Board of Accountancy.
Board of Examiners and Registrars of Architects.
Board of Barber Examiners.
Boxing Commission.
Board of Cosmetology.
Board of Dental Examiners.
Electrical Board.
Commission on Licensure to Practice the Healing Arts.
Board of Examiners in the Basic Sciences.
Board of Examiners in Medicine and Osteopathy.
Motion Picture Operators' Board.
Nurses' Examining Board.
Board of Optometry.
Board of Pharmacy.
Plumbing Board.
Board of Podiatry Examiners.
Board of Registration for Professional Engineers.
Real Estate Commission.
Refrigeration and Air Conditioning Board.
Steam and Other Operating Engineers' Board.
Undertakers' Committee.
Board of Examiners of Veterinarian Medicine.

(2) Unless covered by the exception shown in b(2) the following employees of the government of the District of Columbia appointed on or after October 1, 1965, are excluded from the Civil Service Retirement System:

(a) Employees serving under appointments limited to one year or less, except temporary teachers of the District of Columbia public school system.

(b) Intermittent employees—nonfull-time employees without a prearranged regular tour of duty.

(c) Employees whose pay on an annual basis is $12 per year or less.

(d) Patient or inmate employees in District Government hospitals, homes or penal institutions.

(e) Employees paid on a contract or fee basis.

(f) Employees paid on a piecework basis, except those whose work schedule provides for regular or full-time service.

(g) Employees serving under temporary appointments pending establishment of registers, or pending final determination of eligibility for permanent appointment.

(h) Temporary employees, appointed for one year or less, under any program or project established pursuant to the Economic Opportunity Act of 1964, and summer trainees employed in furtherance of the President's Youth Opportunity Campaign.

b. **Exceptions to exclusions.** (1) The exclusions in paragraph a do not operate for a board or commission member who served in that capacity before August 13, 1960, and who is reappointed upon expiration of his term without break in service or after a separation of three days or less.

(2) The exclusions in items (a) through (g) of a(2) do not deny retirement coverage when (a) employment in an excluded category follows employment subject to the Civil Service Retirement System without a break in service or after a separation from service of three days or less, or (b) the employee is granted competitive status under legislation, Executive order, or the civil service rules and regulations, while he is serving in a position in the competitive service.

810-541 (2) O - 73 - 2

Sample Copy of Standard Form 2801 (Page 1)

APPLICATION FOR RETIREMENT
CIVIL SERVICE RETIREMENT SYSTEM

(USE ONLY IF SEPARATED ON OR AFTER OCTOBER 20, 1969)

To Avoid Delay—1. Read Information Carefully; 2. Complete Application in Full; 3. Typewrite or Print in Ink

A. IDENTIFYING INFORMATION

1. NAME (Last) (First) (Middle): Roe Richard Edward
2. LIST ALL OTHER NAMES YOU HAVE USED: Dick Roe
3. ADDRESS (Including ZIP code): [redacted]
4. PHONE NUMBER (Including Area Code): [redacted]
5. DATE OF BIRTH (Month) (Day) (Year): [redacted]
6. SOCIAL SECURITY ACCOUNT NUMBER: [redacted]
7A. ARE YOU A CITIZEN OF THE UNITED STATES OF AMERICA? [X] YES [ ] NO
7B. IF "NO", OF WHAT COUNTRY ARE YOU A CITIZEN?
8A. ARE YOU MARRIED [X] YES [ ] NO
8B. IF "YES" GIVE THE FOLLOWING INFORMATION

WIFE'S OR HUSBAND'S NAME (First) (Middle)	HER (OR HIS) BIRTH DATE (Month) (Day) (Year)	HER (OR HIS) SOCIAL SECURITY ACCOUNT NUMBER	DATE OF MARRIAGE (Month) (Day) (Year)	PLACE OF MARRIAGE (City) (State)	MARRIAGE PERFORMED BY: [X] CLERGYMAN OR JUSTICE OF THE PEACE [ ] OTHER (Specify)
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	

9A. DO YOU HAVE ANY UNMARRIED CHILDREN UNDER AGE 22 (Or over age 22 and incapable of self support because of a disability incurred before age 18)? [X] YES [ ] NO

9B. IF "YES" LIST NAME AND DATE OF BIRTH OF EACH CHILD. WRITE THE WORD "DISABLED" AFTER CHILD'S NAME WHERE APPLICABLE

CHILD'S NAME (First) (Middle) (Last)	DATE OF BIRTH (Mo.) (Day) (Yr.)	CHILD'S NAME (First) (Middle) (Last)	DATE OF BIRTH (Mo.) (Day) (Yr.)
[redacted]-Disabled	[redacted]		

B. CIVILIAN AND MILITARY SERVICE

1. DEPARTMENT OR AGENCY IN WHICH PRESENTLY OR LAST EMPLOYED, INCLUDING BUREAU OR DIVISION, AND ADDRESS, INCLUDING ZIP CODE: U. S. Civil Service Commission, Washington, D.C. 20415
2. DATE OF FINAL SEPARATION (Month) (Day) (Year): May 28, 1971
3. APPROXIMATE YEARS OF FEDERAL SERVICE: CIVILIAN 34; MILITARY 2
4. TITLE OF LAST POSITION: Claims Examiner
5. DO YOU HAVE FEDERAL EMPLOYEES GROUP LIFE INSURANCE? [X] YES [ ] NO
6. IF YOU HAVE REGULAR LIFE INSURANCE, DO YOU ALSO HAVE OPTIONAL LIFE INSURANCE? [ ] YES [X] NO
7A. HAVE YOU BEEN ENROLLED IN A PLAN UNDER THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM SINCE YOUR FIRST OPPORTUNITY TO ENROLL OR FOR AT LEAST FIVE YEARS IMMEDIATELY BEFORE YOUR RETIREMENT? [X] YES [ ] NO
7B. IF "YES" PLEASE LIST YOUR CURRENT: CARRIER CONTROL NUMBER: 00097868; ENROLLMENT CODE NUMBER: 202
8. COMPLETE THE SCHEDULE BELOW IF YOU HAVE PERFORMED ACTIVE DUTY THAT TERMINATED UNDER HONORABLE CONDITIONS IN ANY OF THE FOLLOWING SERVICES: (A) ARMY, NAVY, MARINE CORPS, AIR FORCE, OR COAST GUARD OF THE UNITED STATES; OR (B) REGULAR CORPS OR RESERVE CORPS OF THE PUBLIC HEALTH SERVICE AFTER JUNE 30, 1960; OR (C) AS A COMMISSIONED OFFICER OF THE COAST AND GEODETIC SURVEY AFTER JUNE 30, 1961; OR (D) AS A COMMISSIONED OFFICER OF THE ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION. ATTACH A COPY OF YOUR DISCHARGE CERTIFICATE OR OTHER CERTIFICATE OF ACTIVE MILITARY SERVICE, IF AVAILABLE.

BRANCH OF SERVICE	SERIAL NUMBER	DATE OF ENTRANCE ON ACTIVE DUTY	DATE OF SEPARATION FROM ACTIVE DUTY	LAST GRADE OR RANK	ORGANIZATION AT DISCHARGE (Div., Regt., Co., etc.)
Army	33750404	Nov. 8, 1943	Nov. 30, 1945	Sergeant	276 Armored Field Artillery Battalion 3rd Army

9A. ARE YOU A MILITARY RESERVIST (Either Active or Inactive)? [ ] YES [X] NO
9B. ARE YOU IN RECEIPT OF OR HAVE YOU EVER APPLIED FOR MILITARY RETIRED PAY? (Retired pay does not include V.A. pension or compensation.) [ ] YES [X] NO
9C. IF "YES" WERE YOU RETIRED FROM A RESERVE COMPONENT UNDER CHAPTER 67, TITLE 10, USC? (Formerly Title III, Public Law 80-810) [ ] YES [ ] NO

C. DISABILITY INFORMATION (Only Applicants for Total Disability Retirement Will Complete This Part)

1. BRIEFLY DESCRIBE YOUR DISABILITIES. STATE WHEN OCCURRED, AND HOW THEY INTERFERE WITH PERFORMANCE OF THE DUTIES OF YOUR POSITION. (ATTACH ADDITIONAL COMMENTS ON PLAIN SHEET OF PAPER, IF NECESSARY.) ALSO, STATE MONTH AND YEAR IN WHICH YOU BECAME TOTALLY DISABLED.

D. OTHER CLAIM INFORMATION

1A. HAVE YOU EVER RECEIVED OR MADE APPLICATION FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT? [X] YES [ ] NO
1B. IF "YES" STATE THE NUMBER OF YOUR COMPENSATION CLAIM AND THE PERIOD FOR WHICH YOU RECEIVED COMPENSATION: CLAIM NUMBER: 217456; FROM (Mo.) (Day) (Year): March 17, 1946; TO (Mo.) (Day) (Year): May 8, 1947
2A. HAVE YOU PREVIOUSLY FILED ANY APPLICATION UNDER THE CIVIL SERVICE RETIREMENT SYSTEM, INCLUDING APPLICATION FOR RETIREMENT, REFUND, DEPOSIT OR REDEPOSIT, OR VOLUNTARY CONTRIBUTIONS? [X] YES [ ] NO
2B. IF "YES" INDICATE THE TYPE(S) OF APPLICATION AND GIVE THE CLAIM NUMBER(S) IF KNOWN: [ ] RETIREMENT [X] DEPOSIT OR REDEPOSIT [X] REFUND [ ] VOLUNTARY CONTRIBUTIONS; CLAIM NUMBER(S): CSD-479285
3A. DO YOU HAVE LIFE INSURANCE THROUGH A FORMER EMPLOYEE BENEFICIAL ASSOCIATION FOR WHICH YOU NOW PAY PREMIUMS TO THE CIVIL SERVICE COMMISSION? [X] YES [ ] NO
3B. IF "YES" GIVE YOUR ACCOUNT NUMBER: B 123456
4A. HAVE YOU EVER BEEN EMPLOYED UNDER ANOTHER RETIREMENT SYSTEM FOR FEDERAL OR DISTRICT OF COLUMBIA EMPLOYEES? [ ] YES [X] NO
4B. IF "YES" GIVE THE NAME OF THE OTHER RETIREMENT SYSTEM

STANDARD FORM NO. 2801
U.S. CIVIL SERVICE COMMISSION

January 1970
FPM Supplement 831-1
2801-107

Sample Copy of Standard Form 2801, Application for Retirement (Page 2)

INDICATE, BY SIGNING YOUR INITIALS IN THE APPROPRIATE BOX BELOW, THE TYPE OF ANNUITY YOU WANT TO RECEIVE. READ THE EXPLANATIONS AND CONSIDER THE MATTER CAREFULLY. NO CHANGE WILL BE PERMITTED AFTER AN ANNUITY HAS BEEN GRANTED. IF YOU WANT AN ANNUITY WITH A SURVIVOR BENEFIT, BE SURE TO GIVE THE OTHER INFORMATION CALLED FOR.

F. TYPES OF ANNUITY: MARRIED APPLICANTS ONLY

1. INITIALS: PCR — **ANNUITY WITH SURVIVOR BENEFIT TO WIDOW OR WIDOWER**

SPECIFY THE PORTION OF YOUR ANNUITY YOU WANT USED AS THE BASE FOR YOUR WIDOW'S (OR WIDOWER'S) SURVIVOR ANNUITY.

If you want all your annuity used as the base for the survivor benefit, write the word "all" in the box below. If you want only part of your annuity used as the base for the survivor benefit, write the yearly amount of your annuity you want used.

$ all — THE SURVIVOR'S ANNUITY WILL BE 55% OF ALL OR WHATEVER PORTION OF YOUR ANNUITY YOU SPECIFY AS THE BASE FOR HER (OR HIS) BENEFIT.

- If you are married, you will receive this type of annuity unless you choose the annuity in F. 2.
- The annuity payable to you during your lifetime will be reduced by 2½% of any amount up to $3,600 a year used as the base for the survivor benefit, plus 10% of any amount over $3,600 so used.
- If your wife (or husband) should die before you, no change in type of annuity will be permitted, your annuity will not be increased, nor may you name any other person as survivor.
- The survivor's annuity will not begin until your death.

2. INITIALS: [ ] — **ANNUITY WITHOUT SURVIVOR BENEFIT**

(I do not desire my wife (or husband) to receive a survivor annuity benefit after my death.)

- If you choose this type, your wife (or husband) cannot be paid a survivor annuity after your death.
- This type provides annuity payments to you only.

G. TYPES OF ANNUITY: UNMARRIED APPLICANTS ONLY (Including Widowed and Divorced)

1. INITIALS: [ ] — **ANNUITY WITHOUT SURVIVOR BENEFIT**

- If you are not married, you will receive this type of annuity unless you choose the annuity in G. 2.
- This type provides annuity payments to you only.

2. INITIALS: [ ] — **ANNUITY WITH SURVIVOR BENEFIT TO NAMED PERSON HAVING AN INSURABLE INTEREST**

SPECIFY THE NAME, RELATIONSHIP, DATE OF BIRTH, AND SOCIAL SECURITY ACCOUNT NUMBER OF THE PERSON YOU WISH TO RECEIVE THE SURVIVOR ANNUITY

NAME OF PERSON *(First, middle, last)*	
RELATIONSHIP	DATE OF BIRTH *(Mo., day, yr.)*
	SOCIAL SECURITY ACCOUNT NUMBER

SEE UNMARRIED EMPLOYEES UNDER INFORMATION REGARDING SURVIVOR ANNUITIES ON THE ATTACHED INFORMATION SHEET FOR EXPLANATION OF REDUCTION IN YOUR ANNUITY.

- This type is available to all retiring *unmarried* employees who are *in good health*.
- It provides a reduced annuity to you and a survivor annuity to the person named as having an insurable interest.
- The survivor's annuity will not begin until your death.
- The survivor's annuity will be 55% of the reduced annuity you receive.
- If you choose this type of annuity you will have to undergo a medical examination which will be arranged by the Civil Service Commission at no cost to you.
- If the person named as having an insurable interest should die before you, no change in type of annuity will be permitted, your annuity will not be increased, nor may you name any other person as survivor.

H. CERTIFICATION OF APPLICANT

WARNING.—Any intentional false statement in this application or willful misrepresentation relative thereto is a violation of the law punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both (18 U.S.C. 1001).

I hereby certify that all statements made in this application are true to the best of my knowledge and belief.

May 1, 1971 (DATE) — Richard E. Roe (SIGNATURE OF APPLICANT)

I. FOR USE OF EMPLOYING AGENCY (See FPM Supplement 831-1 for instructions.)

CHECK APPROPRIATE BOX:

[ ] INDIVIDUAL RETIREMENT RECORD, SF 2806, AND REGISTER OF SEPARATIONS AND TRANSFERS, SF 2807, ARE ATTACHED.

[X] INDIVIDUAL RETIREMENT RECORD, SF 2806, WAS SENT TO U.S. CIVIL SERVICE COMMISSION ON May 14, 1971 (DATE) WITH REGISTER OF SEPARATIONS AND TRANSFERS, SF 2807, NO. CSC 71-10.

NAME OF AGENCY PERSON WHO CAN FURNISH ADDITIONAL INFORMATION ABOUT THIS APPLICATION, IF NECESSARY *(Type or print)*	SIGNATURE OF RESPONSIBLE AGENCY OFFICIAL: Stephen B. Clark
Stephen B. Clark	OFFICIAL TITLE: Director of Personnel — DATE: May 3, 1971
TELEPHONE NUMBER, INCLUDING AREA CODE: 202-63-24679	DEPARTMENT OR AGENCY: U. S. Civil Service Commission

OFFENSES BARRING ANNUITY PAYMENTS: Title 5 USC 8312 prohibits payment of annuity to persons who have committed specified offenses involving the national security of the United States. Employing agencies are responsible for submitting all pertinent information to the Civil Service Commission's Bureau of Retirement, Insurance, and Occupational Health in any case when this law possibly applies.

Sample Copy of Standard Form 2801–A (Face)

Standard Form No. 2801–A U.S. Civil Service Commission July 1966 FPM Supplement 831–1	**SUPERIOR OFFICER'S STATEMENT** IN CONNECTION WITH DISABILITY RETIREMENT CIVIL SERVICE RETIREMENT SYSTEM	2801–204

TO: SUPERIOR OFFICER.—Under the Civil Service Retirement System, the term disability means totally disabled for useful and efficient service in the grade or class of position last occupied by the employee, by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on his part within 5 years of becoming so disabled. *Answer the following questions as completely as you can.* Your objective and prompt completion of this statement is of utmost importance to the Government and the applicant.

IMPORTANT: Item 15 must be completed by the agency Coordinator for the Employment of the Handicapped (in his absence the Personnel Officer) having jurisdiction over the place of employment.

1. NAME OF APPLICANT FOR DISABILITY RETIREMENT (Last)	(First)	(Middle)	2. HOW LONG HAVE YOU BEEN THE APPLICANT'S SUPERIOR OFFICER?
Wilson	John	F.	6 months

3. WHEN DID APPLICANT ENTER ON DUTY IN POSITION LAST OCCUPIED?	4. APPROXIMATELY HOW MANY DAYS HAS APPLICANT BEEN ABSENT BECAUSE OF ILLNESS WITHIN THE PAST 2 YEARS?
January 2, 1966	23 days

5. BRIEFLY DESCRIBE THE DUTIES AND RESPONSIBILITIES OF THE APPLICANT'S POSITION AND ALSO IMPORTANT ENVIRONMENTAL FACTORS CONNECTED WITH THE JOB, OR ATTACH OFFICIAL COPY OF JOB DESCRIPTION, IF MORE CONVENIENT.

Aircraft Mechanic - Job description attached.

Incumbent is required to do heavy lifting, work in cramped positions, work on slippery surfaces and is exposed to noise in excess of 105 decibels

6. WHICH OF THE DUTIES DESCRIBED IN ITEM 5 WAS THE APPLICANT UNABLE TO PERFORM ON ACCOUNT OF HIS DISABILITY?

Cannot lift over 15 pounds, work in cramped positions and has been restricted from working in high noise areas

7. AS FAR AS YOU WERE ABLE TO OBSERVE, HOW DID THE APPLICANT'S DISABILITY INTERFERE WITH OR PREVENT HIS PERFORMANCE OF THE DUTIES LISTED IN ITEM 6?

Could not do the lifting required and because of stiffness cannot work in cramped position

8. AS FAR AS YOU KNOW, HAS EXCESSIVE USE OF ALCOHOL OR DRUGS EVER INTERFERED WITH APPLICANT'S PERFORMANCE OF HIS DUTIES? IF SO, PLEASE GIVE DETAILS.

Not to my knowledge

9. DESCRIBE ANY INSTANCES OF EMOTIONAL INSTABILITY OR ABNORMAL BEHAVIOR ON THE PART OF THE APPLICANT.

None except becomes irritable when he appears to be in pain

(CONTINUE ON OTHER SIDE)

Sample Copy of Standard Form 2801–A, Superior Officer's Statement in Connection With Application for Total Disability Retirement (Back)

10. IF THE APPLICANT WAS FIRST HIRED WITH A PHYSICAL HANDICAP, PLEASE STATE WHETHER OR NOT THERE HAS BEEN ANY AGGRAVATION OF THE HANDICAP SINCE HE ENTERED ON DUTY. IF THE ANSWER IS "YES," PLEASE STATE WHEN SUCH AGGRAVATION WAS FIRST NOTICED AND TO WHAT DEGREE IT HAS NOW PROGRESSED.

Wore a 1 inch lift on right shoe because of shortened leg. Has not changed and does not interfere with work

11. PLEASE STATE ANY OTHER FACTS CONCERNING THE APPLICANT'S DISABILITY WHICH YOU FEEL MAY BE HELPFUL TO THE MEDICAL OFFICERS OF THE CIVIL SERVICE COMMISSION IN DETERMINING WHETHER THE APPLICANT MEETS THE ELIGIBILITY REQUIREMENTS FOR RETIREMENT ON ACCOUNT OF TOTAL DISABILITY.

It is apparent that employee becomes easily fatigued and is unable to work steadily

12. PLEASE FURNISH TOTAL YEARS OF CIVILIAN SERVICE APPLICANT HAS PERFORMED.

18 years civilian service

13. PLEASE FURNISH TITLE OF POSITION APPLICANT HELD PRIOR TO LAST POSITION OCCUPIED AND LENGTH OF TIME IN THAT POSITION.

Automobile Mechanic 15 years
Aircraft Mechanic 3 years

14.

Alvin W. Jones — (Signature of Superior Officer)
Supv. Aircraft Mechanics — (Title)
July 7, 1967 — (Date)

Department of Air Force — (Name of Agency)
Eglin Air Force Base, Florida 32542 — (Mailing Address, including ZIP Code, of Agency)

15. CERTIFICATION BY COORDINATOR FOR THE EMPLOYMENT OF THE HANDICAPPED

I certify that there are no positions available at the same grade or class for which this employee is qualified. Furthermore, reassignment or trial detail to another position was not possible for the following reason(s):

- [ ] Employee's physical and/or mental condition precludes reassignment or trial detail.
- [x] Employee declined an offer of reassignment or trial detail at the same salary.
- [ ] Employee declined an offer of reassignment or trial detail because of reduction in salary and/or grade.
- [ ] Employee was not qualified for any available positions.
- [ ] Employee could not be retrained to qualify for available positions.
- [ ] Other (specify):

Alfred J. Smith — (Signature)
July 12, 1967 — (Date)
Coordinator — (Title)

NOTE: This completed statement must be submitted with other supporting documents.

Sample Copy of Standard Form 2801–B (Face)

Standard Form 2801-B
U.S. Civil Service Commission
JANUARY 1966
FPM Supplement 831-1

PHYSICIAN'S STATEMENT
IN CONNECTION WITH DISABILITY RETIREMENT
CIVIL SERVICE RETIREMENT SYSTEM

PART A.—TO BE COMPLETED BY APPLICANT

INSTRUCTIONS

1. Complete Part A and give this form to your physician. He should complete Part B and mail it to the address you furnish in Item 4, Part A.
2. Neither your employing office nor the Civil Service Commission can pay any expense incurred in completing this form.

1. PRINT OR TYPE FULL NAME *(Last, First, Middle)*: Brown, John James

2. DATE OF BIRTH *(Month, Day, Year)*: [redacted]

3. I HEREBY GIVE MY PERMISSION FOR YOUR RELEASE TO THE U.S. CIVIL SERVICE COMMISSION DIRECTLY OR THROUGH MY EMPLOYING OFFICE OF ANY OR ALL INFORMATION OR RECORDS CONNECTED WITH MY ILLNESS.

SIGNATURE: John J. Brown

ADDRESS *(Including ZIP Code)*: [redacted]

DATE: May 18, 1967

4. IN SPACE BELOW, ENTER THE EXACT NAME AND ADDRESS (INCLUDING ZIP CODE) OF YOUR EMPLOYING OFFICE.

ADDRESS TO WHICH PHYSICIAN SENDS STATEMENT:
Civilian Personnel Officer
San Francisco Naval Shipyard
Hunters Point
San Francisco, California 94102

5. TITLE OF FEDERAL (OR D.C.) GOVERNMENT POSITION OCCUPIED *(Explain duties to your personal physician.)*: Rigger

6. IF YOU ARE PRESENTLY EMPLOYED IN ANY JOB OTHER THAN YOUR FEDERAL (OR D.C.) GOVERNMENT POSITION, PRINT OR TYPE BELOW DETAILS CONCERNING JOB, INCLUDING TYPE OF WORK PERFORMED.

PART B.—TO BE COMPLETED BY PHYSICIAN

INSTRUCTIONS

1. Report in detail the clinical symptoms and findings upon which your diagnosis and conclusions are based. A complete and objective report may permit a decision on the claim for disability without need for further examination and inconvenience to the applicant.
2. The applicant is responsible for any costs incurred in connection with your statement.
3. Send the completed form to the office named by the applicant in Item 4, Part A.
4. You may enclose this report in a sealed envelope marked "Disability Retirement-Privileged-Private."

MEDICAL HISTORY

1. HOW LONG HAS EMPLOYEE BEEN UNDER YOUR PROFESSIONAL CARE FOR THE INDICATED DISABILITY? *(Give dates)*: May 5, 1964 to May 18, 1967

2. WHEN DID YOU LAST SEE THE EMPLOYEE FOR EXAMINATION OR TREATMENT? *(Give Dates)*: May 18, 1967

3. IF EMPLOYEE IS CURRENTLY HOSPITALIZED OR HAS BEEN HOSPITALIZED RECENTLY, PLEASE FURNISH:

NAME AND ADDRESS (INCLUDING ZIP CODE) OF HOSPITAL OR OTHER MEDICAL FACILITY:
University of California Hospital
San Francisco, California 94122

DATE OF ADMISSION: February 3, 1967

DATE OF DISCHARGE: February 24, 1967

PLEASE ATTACH SUMMARY REPORT OF HOSPITALIZATION OR ABSTRACT OF HOSPITAL RECORDS

4. DESCRIBE FULLY THE ONSET OF DISABILITY, PROGRESSION, AND CURRENT SYMPTOMS

Sudden onset of substernal pain which awakened patient from sleep at 2 a.m. Pain described as vise-like constriction not relieved by sitting up or by any other body positioning. Accompanied by dyspnea, nausea, urination and severe diaphoresis. Upon hospitalization was acutely ill in state of shock, showing hypotension, tachycardia, and weak thready pulse. Skin was ashen grey with profuse sweating. EKG revealed S-T segments greatly elevated in Leads II, III, and aVF, depressed S-T segments in Leads I and aVL. Therapy was symptomatic and supportive. Hospital course was relatively uneventful and after three weeks he was discharged to continue treatment at home. Upon resuming ambulatory activity has experienced substernal pain radiating down the left arm, relieved promptly by rest and sublingual nitroglycerin.

2801-305 PHYSICIAN: PLEASE COMPLETE OTHER SIDE OF THIS STATEMENT ALSO

Sample Copy of Standard Form 2801–B, Physician's Statement in Connection With Application for Total Disability Retirement (Back)

PHYSICAL FINDINGS

Describe the clinical findings in detail as fully as possible, particularly with respect to the condition which is considered disabling. Your complete and objective report of medical examination is of the utmost importance to the Government and to the applicant for disability retirement.

1. HEIGHT	2. WEIGHT	3. TEMPERATURE	4. MUSCULAR DEVELOPMENT	5. PULSE	6. RESPIRATION
72"	210	98.8°	Very good	82	18
7. NUTRITION	**8. POSTURE**	**9. GAIT**	**10. GENERAL APPEARANCE**	**11. BLOOD PRESSURE**	
Moderately obese	Good	Good	Plethoric	SYSTOLIC 170	DIASTOLIC 85

12. COMPLETE PHYSICAL FINDINGS

General appearance - well developed, moderately obese male.
Skin - clear with ruddy complexion.
Head and Neck - normal. Thyroid not palpable.
Chest - moderately emphysematous with increased AP diameter. Breath sounds normal throughout both lung fields except for few scattered dry, sibilant rales.
Cardiovascular - heart not appreciably enlarged, rhythm regular, no murmurs present.
Retinal blood vessels - "copper-wire" arteries.
Peripheral blood vessels - pulsations diminished in lower extremities and dorsalis pedis arteries are not palpable. Both feet appear slightly pale and blanch moderately upon elevation. No edema present.
Abdomen - normal.
Extremities - normal.
EKG - currently shows Q waves and inverted T waves in Leads II, III and aVF.
X-ray of chest - moderate hilar fibrosis. Heart slightly enlarged.

(IF ADDITIONAL SPACE IS REQUIRED, PLEASE CONTINUE ON SEPARATE SHEET)

DIAGNOSIS

1. Arteriosclerosis - generalized
2. Coronary artery heart disease
   a. Coronary thrombosis
   b. Posterior myocardial infarction
   c. Anginal syndrome
3. Ischemia of lower extremities - moderate

CONCLUSIONS

NOTE: Under the civil service retirement system, the term disability means disabled for useful and efficient service in the grade or class of position last occupied by the employee, by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct.

1. IS EMPLOYEE DISABLED FOR THE POSITION NAMED IN PART A, ITEM 5?	2. DATE DISABILITY BEGAN?	3. HOW LONG IS DISABILITY EXPECTED TO LAST?	4. IS DISABILITY DUE TO VICIOUS HABITS, INTEMPERANCE OR WILLFUL MISCONDUCT?
[X] YES [ ] NO	February 3, 1967	Permanently	[ ] YES [X] NO

PHYSICIAN'S NAME AND ADDRESS

1. TYPE OR PRINT PHYSICIAN'S NAME	2. PHYSICIAN'S SIGNATURE
Gerald C. Burns, M. D.	Gerald C. Burns
3. PHYSICIAN'S ADDRESS (INCLUDING ZIP CODE)	**4. DATE**
450 Sutter Street San Francisco, California 94102	May 18, 1967

Sample Copy of Standard Form 2801–D

Standard Form No. 2801–D U.S. Civil Service Commission FPM Supplement 831–1	REQUEST FOR MEDICAL RECORDS (TO HOSPITAL OR INSTITUTION) IN CONNECTION WITH DISABILITY RETIREMENT CIVIL SERVICE RETIREMENT SYSTEM	6 GAO 5000 2801–501

ATTENTION: MEDICAL RECORDS DEPARTMENT

Washington Hospital Center
110 Irving Street, NW.
Washington, D.C. 20010

APPLICANT: TYPE OR PRINT NAME AND ADDRESS OF HOSPITAL OR INSTITUTION IN BOX AT LEFT

AUTHORIZATION FOR RELEASE OF INFORMATION—TO BE COMPLETED BY APPLICANT

I have applied for disability retirement under the Civil Service Retirement Act and hereby authorize release of my medical records through my employing agency, to the U.S. Civil Service Commission. The records will be reviewed by Federal medical officers and used solely for official purposes. I will pay any necessary fee involved.

SIGNATURE OF PATIENT OR OF PERSON FILING ON HIS BEHALF	DATE
Donald J. Edge	June 15, 1965
CURRENT ADDRESS (NUMBER AND STREET, CITY, STATE, ZIP CODE)	
[redacted]	

IDENTIFYING INFORMATION—TO BE COMPLETED BY APPLICANT

1. NAME OF PATIENT (TYPE OR PRINT)	2. DATE OF BIRTH
Donald J. Edge	[redacted]
3. ADDRESS OF PATIENT AT TIME OF ADMISSION (IF SAME AS CURRENT ADDRESS, SO STATE)	
Same as current address	

4. ADMISSION DATE(S)	5. DISCHARGE DATE(S)	6. GIVE ANY NECESSARY ADDITIONAL IDENTIFYING DATA SUCH AS BUILDING, CLINIC, PATIENT NUMBER, ETC.
January 12, 1965	January 17, 1965	☒ IN-PATIENT ☐ OUT-PATIENT

7. IN SPACE BELOW, ENTER THE EXACT NAME AND ADDRESS OF YOUR EMPLOYING OFFICE	
ADDRESS TO WHICH HOSPITAL OR INSTITUTION SENDS REPORT	Director of Personnel XYZ Agency 300 Independence Avenue, SW. Washington, D.C. 20201

INFORMATION FOR HOSPITAL OR INSTITUTION

- PLEASE FURNISH a copy of the DISCHARGE SUMMARY which includes history, clinical course, physical and laboratory findings, therapy and response, and diagnosis.
- If such a summary is not available, please furnish a copy of Admission History, Physical Findings, Laboratory and X-ray findings, as well as Final Diagnosis.
- If you cannot furnish copies of your records, please provide a narrative or other summary which includes this information.
- Please enclose your report in a sealed inner envelope marked with name of applicant and the words "Disability Retirement—Privileged—Private."

U.S. GOVERNMENT PRINTING OFFICE: 1964—O-755-148 834-E

CHAPTER 5

DISCIPLINARY ACTION (INCLUDING SEPARATION FOR CAUSE) - FOREIGN SERVICE

5A. General

1. Uniform State/AID/USICA Regulations, 3 FAM 760, effective July 13, 1979, establish policies and procedures governing disciplinary actions (including separation for cause for all U.S. citizen Foreign Service employees). These regulations are included as Attachment 5A.

2. The separation of an employee for cause is the most severe penalty the Agency can impose. Less severe disciplinary actions should be considered prior to any decision to separate an employee. Managers should contact PM/ERS before initiating disciplinary actions.

5B. Policy

1. The Agency expects its employees to maintain high standards of conduct and performance. Supervisors are responsible for recognizing shortcomings in their subordinates' conduct or performance to a degree which necessitates corrective action, and to initiate such action promptly, impartially, and constructively. In such a case, the employee is fully informed of the reasons for the Agency action, and he/she is given an opportunity to answer charges brought against him/her.

2. In administering disciplinary actions, the Agency seeks to maintain reasonable consistency and equity by taking, where possible, comparable action in comparable cases. It is not realistic, however, to suppose that a prescribed schedule of offenses and penalties can be applied mechanically to achieve this end. Supervisory judgement is an indispensable element in evaluating individual cases. Therefore, responsible officials weigh carefully all of the circumstances, consider fully the employee's previous record, his/her character and his/her potential, and contemplate probable consequences before initiating disciplinary actions.

3. Normally, management officials will take whatever corrective measures are appropriate and feasible (including imposition of lesser disciplinary actions) in order to avert separation for cause. However, separation action may be initiated immediately if necessary to promote the efficiency of the service; e.g., in cases of serious misconduct or malfeasance.

4. In overseas areas, special consideration is given to the impact on relationships with the cooperating country of any breach of conduct, and of the effect of such breach of conduct on mission accomplishment.

5C. Applicability

This chapter is applicable to disciplinary actions (including separation for cause) involving U.S. citizen employees holding FSR or FSS appointments in the AID Foreign Service. It is applicable to employees holding time-limited appointments if the proposed action is based on misconduct. The procedures set forth in Attachment 5A must also be followed when proposed action is for failure to accept an assignment as prescribed in 5D. Excluded from coverage are separations resulting from:

1. Reduction-in-Force (Chapter 2C).

2. Security determinations (Handbook 6).

3. Abandonment of Position (Chapter 1A).

4. Selection-out (Chapter 2D).

5. Termination of time-limited appointment for reason other than misconduct (Chapter 2E).

6. Disability (Chapter 2G).

7. Termination of executive personnel who serve at the discretion of the Administrator (Handbook 25, Chapter 8).

5D. Separation - Failure to Accept Assignment

1. General

a. The provisions of this section apply when the Agency proposes an assignment for a Foreign Service employee, to the same or a different post, country, region, or organizational location, which the employee refuses to accept.

2. Policy

a. It is Agency policy to grant unlimited (career) appointments only to those employees who are available for service on a world-wide basis. Failure of an employee holding an unlimited appointment to accept an assignment considered to be in the best interests of the Agency, for his/her own reasons, therefore contradicts the concept of career service.

b. The policy stated above is necessary to ensure the Agency sufficient flexibility in the assignment of its career personnel to meet program requirements and Agency objectives. Normally employees may expect assignment to locations which take into account such personal considerations as health of the employee and his/her dependents and school facilities. However, in the interest of program needs, employees can be required to serve at posts where these considerations cannot be accommodated to the desired degree.

5B2

c. The above policy statement applies to an employee holding a limited appointment, who, upon appointment, signed an agreement to serve at such post or posts as he/she is assigned.

d. Accordingly, the refusal of any employee covered by this section to accept an assignment considered to be in the best interest of the Agency is an appropriate basis for his/her separation to promote the efficiency of the service.

e. Separation for failure to accept an assignment does not reflect adversely on an employee's suitability or competence for service in AID programs. When such action becomes necessary, however, the applicable procedures for disciplinary separation, as set forth in Attachment 5A, are followed to preserve the job protection rights to which employee is entitled.

3. Procedures

a. An employee who declines a proposed assignment is required to state in writing, over his/her signature, reasons for declination. The written statement is forwarded, through administrative channels, to the Office of Personnel Management in AID/W. That office, upon consideration of the employee's statement and examination of possible alternative courses of action, is responsible for a decision whether to initiate separation.

b. If a decision to propose separation for failure to accept an assignment is reached, the procedures and responsibilities set forth in Attachment 5A are applied for unlimited employees. Employees holding time-limited appointments are separated under procedures outlined in Chapter 2E. Notices to the employee are written in such a way as to remove any implication of misconduct or incompetence.

4. Appeals

An unlimited employee, whose separation for "failure to accept assignment" is proposed, may appeal such reason for the separation pursuant to Attachment 5A. Thus, an employee holding a nontemporary appointment, without time limitation, is entitled to a hearing by the AID Board of Review and Appeals, unless he/she chooses to waive in writing his/her right to such hearing. Employees holding time-limited appointments do not have such appeal rights.

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ATTACHMENT 5A

760
DISCIPLINARY ACTION (INCLUDING SEPARATION FOR CAUSE)

761 GENERAL

(TL:PER-5 10-15-84)
(Uniform State/AID/USIA)

761.1 Coverage

These regulations apply to U.S. citizen Foreign Service employees of the Department of State, the Agency for International Development (AID), and the U.S. Information Agency (USIA), but not to consular agents.

761.2 Definitions

a. "Admonishment" means to warn or caution an employee.

b. "Agency" means the Department of State, the Agency for International Development (AID), or the U.S. Information Agency (USIA), or their successor agencies.

c. "Days" means calendar days.

d. "Deciding official" means the individual who makes the decision to admonish, reprimand, suspend, or separate an employee for cause.

e. "Disciplinary action" means action against an employee in the form of an admonishment, a reprimand, suspension, or separation for cause.

f. "Employee" means any U.S. citizen Foreign Service employee of the agencies, but not consular agents.

g. "Proposing official" means the individual who, as a result of personal knowledge, or receipt of a report, investigation, Officer's Evaluation Report, Performance Evaluation Report, or information from others regarding any act or behavior by an employee which may be grounds for disciplinary action, proposes a disciplinary action to the deciding official.

h. "Reprimand" means officially rebuking, censuring, or registering disapproval of a specific action or actions by an employee, in writing.

i. "Separation for cause" means separation from the Service because of the unsatisfactory performance of duties or for such other cause as will promote the efficiency of the Service.

j. "Service" means the Foreign Service of the United States.

k. "Suspension" means placing an employee in a temporary nonduty and nonpay status for disciplinary reasons.

761.3 Legal Basis for Disciplinary Action

a. For Admonishment, Reprimand, and Suspension

5 U.S.C. 301 and Executive Orders 10477 and 12048 authorize the Secretary and the Director of USIA, respectively, to prescribe regulations governing the conduct of their employees; 22 U.S.C. 842 for State, and Executive Order 10477 and 22 U.S.C. 1224 for USIA, authorize the Secretary and the Director, respectively, to prescribe regulations in relation to the duties, functions, and obligations of officers and employees of the Service and the administration of the Service; State Department Delegation of Authority No. 104, as amended, and 22 U.S.C. 2381(a) authorize the Administrator of AID to exercise similar authority of the Secretary.

b. For Separation for Cause

22 U.S.C. 1007 authorizes the Secretary to prescribe regulations for separating officers and employees of the Service on account of unsatisfactory performance of duties, or for such other cause as will promote the efficiency of the Service; Executive Order 10477 and 22 U.S.C. 1224 for USIA and State Department Delegation of Authority No. 104, as amended, for AID, authorize the Director of USIA and the Administrator of AID, respectively, to utilize the authority of the Secretary.

762 GROUNDS FOR ACTION

The following may constitute grounds for action under these regulations leading to admonishment, reprimand, suspension, or separation for cause:

a. Unsatisfactory performance of duties;
b. Unauthorized absence;
c. Insubordination;
d. Disobedience of or failure to follow instructions;
e. Breach of security regulations;
f. Absence without leave;
g. Any other act or activity, specifically prohibited under the regulations on employee responsibilities and conduct set forth in section 620, or under the regulations on suitability set forth in section 622, notably section 622.9(j);
h. Or for such other cause as will promote the efficiency of the Service, according to the provisions of section 622.9 (Standards of Conduct).

763 COMMON PROCEDURES

763.1 Policy

Disciplinary procedures will be carried out in a fair, timely, and equitable manner.

763.2 Investigation and Reporting of Facts

a. An employee's supervisor or other appropriate official is responsible for reporting to the appropriate proposing official facts concerning any employee under the supervisor's jurisdiction, which the supervisor considers may be grounds for disciplinary action.

b. When an investigation involves charges against a chief of mission (or officer in a position of comparable importance), such investigation will be conducted by the Office of the Inspector General (State), Office of Auditor General (AID), Of-

fice of Security (USIA), or a designee of the head of the agency.

c. The proposing official should ensure that any investigation which proceeds beyond simply an evaluation of the source of information should, as a general rule, include appropriate notice to the employee that an inquiry has been opened, unless such notice would compromise the investigation. If the employee is interviewed as part of the investigation and is requested to provide any personal information, the Privacy Act of 1974 (Public Law 93-579) requires that the employee be informed of the authority for the inquiry, whether the employee's answers are mandatory or voluntary, the purpose of the inquiry including any routine uses which might be made of the data in the future, and the consequences to the employee of not providing all or part of the information requested. If the employee is being interviewed concerning matters for which the employee could be criminally prosecuted, the employee shall be so advised and be informed that the employee may refuse to answer. The employee will be informed of the employee's right to have a representative present during all interviews being made as part of the investigation and to have a representative act on the employee's behalf.

d. The employee will be given an opportunity to respond to the allegations and, if the employee desires, a reasonable amount of official time to prepare the response. The proposing official shall receive and consider the employee's response and its supporting evidence. The employee will have the right to review and receive copies of all records collected in the course of the investigation and shall be given copies of all reports and/or recommendations completed at each stage of the investigation. The employee shall be granted a reasonable opportunity to review official and unofficial records and to obtain copies of such records.

e. The reporting of an investigation is processed as outlined in section 763.4. However, when a report is the result of an investigation by the Office of the Inspector General for State or by the Office of the Auditor-General for AID, the results of such an investigation shall be forwarded to the Director General through the Inspector General for State and to the Director, Office of Personnel Management, for AID through the Auditor General. Reports of an investigation conducted by the Office of Security of USIA shall be forwarded to the Director or Deputy Director in accordance with existing agency regulations.

763.3 Status of Employee Pending Decision

a. Pending decision at any stage of processing under these regulations, the supervisor or other appropriate official or the proposing or deciding official will determine the employee's status and take appropriate action as outlined in section 760 Appendix A.

b. The supervisor or other appropriate official or the proposing or deciding official may direct the exclusion of an employee from all or part of the official premises. If exclusion is from only part of the official premises, the official will provide the employee work and a place for the period of time in this status. Duty status may be in the employee's regular position or by assignment or detail to other duties.

c. When action is taken under this section, the agency will proceed with investigation and processing the disciplinary action on an expedited basis.

d. Any employee being removed from duty status and placed on enforced leave on nonduty status with pay will be so informed in writing.

763.4 Recommending Disciplinary Action, Including Separation for Cause

a. After investigating an incident, accusation, or circumstance, including any mitigating factors, and after carefully considering the evidence, the proposing official shall determine whether to close the case, or to recommend to the appropriate deciding official that action be initiated for appropriate disciplinary action, including separation for cause.

b. If the proposing official decides to close the case, that official may send any investigation report and any other related documents to the Director, Office of *Employee Relations (PER/ER)* for State; PM/ERS for AID; or Director of the Office of Security *(M/S)* for USIA, where the file will be kept under appropriate safeguard for 1 year and destroyed if no other disciplinary action has been considered or initiated within that time. If records are not forwarded, they may be destroyed or held up to 1 year. In those cases where an employee has been informed of an investigation for disciplinary purposes, and the decision was made not to discipline the employee, the employee will be so informed.

c. If a supervisor or other appropriate official (in the capacity of deciding official) admonishes an employee, that official shall maintain all reports supporting such action as provided in section 764.2.

d. If the proposing official decides to recommend disciplinary action including separation for cause, that official shall transmit such recommendation and the report to the appropriate deciding official. If overseas, the supervisor reporting the behavior or act shall transmit a summary of the reasons by an appropriate restrictive personnel telegraphic channel and pouch the full and complete report to the appropriate proposing official.

e. The report shall include:

(1) Details of inquiry or investigation;

(2) Statement of charges;

(3) All other pertinent factual materials;

(4) The employee's response, if any, to the allegations; and

(5) If no response, a statement that the employee was given reasonable opportunity to submit a response but chose not to do so.

f. Whether a case is closed under this or any other section or reported for proposed disciplinary action, the entire record shall be kept separate from the employee's Official Personnel Folder.

763.5 Decision on Recommendation

a. After a review of the entire file, including the employee's reply, if any, the deciding official will decide:

(1) Whether further investigation or consideration of the case is warranted;

(2) Whether to continue the employee in a duty or nonduty status (see section 763.3 and section 760 Appendix A);

(3) Whether to admonish, reprimand, or suspend for a specific period of time;

(4) Whether to propose charges leading to separation; or

(5) Whether to consult agency legal authority on referring the matter to the Attorney General or other official having statutory jurisdiction over the matter.

b. Before deciding to report any behavior or act which may lead to disciplinary action, a supervisor or other appropriate official may wish to contact the appropriate official listed in section 766.1 in order to foster equity and consistency of disciplinary action for like or similar offenses.

763.6 Resignation or Retirement During Period of Proceedings

a. An employee is free to resign or retire at any time on a mutually agreed effective date, and to have the employee's reasons for resigning or retiring entered in the "Remarks" section of the Notification of Personnel Action *(SF–50)* for State *and USIA and form 4-520 for AID.*

b. If the employee submits a resignation or retires during the period following notification to the employee that separation for cause has been proposed or decided, the agency will inform the employee before the time the resignation or retirement is accepted that appropriate notation to that effect will be made in the "Remarks" section of the Notification of Personnel Action. This requirement may be waived upon request of the employee if a deciding official considers the reasons for proposed disciplinary action not relevant as a significant factor in consideration for employment outside the Foreign Service.

763.7 Death or Disability of Employee

If an employee dies or is separated for disability before a decision on a proposed disciplinary action is effected, the agency shall cancel such proposed action.

763.8 Right to Representation in Disciplinary Action and Separation for Cause Situations

a. Except as otherwise provided in 18 U.S.C. 205 and 207, an employee may be represented by any person of the employee's choosing. If a representative is disallowed, the agency shall fully state the reasons in writing and provide the employee a reasonable time to secure another representative. Any representative who has not received an appropriate security clearance may not receive any classified information or be present when classified information is presented or heard, at any stage of disciplinary proceedings.

b. A representative who is under the control, supervision, or responsibility of a foreign affairs agency shall be granted reasonable periods of official leave to prepare for and to represent the employee in any administrative proceeding.

763.9 Right To File a Grievance

Employees are referred to the grievance regulations (3 FAM 660) which specify the rights an employee may have to grieve certain disciplinary actions. Nothing herein precludes an employee from exercising any right provided by statute to otherwise grieve or seek redress. An employee may request the suspension of any disciplinary action during the pendency of a grievance pursuant to sections 664.1b and 666.3.

764 ADMONISHMENT

764.1 Deciding Official

The employee's supervisor or any official in the employee's supervisory chain may admonish the employee.

764.2 Delivering an Admonishment

An admonishment will be delivered to an employee orally and in private. An admonishment may be delivered in writing only when, due to distance, oral communication is impossible. When an admonishment is made in writing, the employee will receive the original and a copy may be retained by the deciding official under appropriate safeguards, and will be destroyed after 1 year. No copy of a written admonishment will be placed in the employee's Official Personnel File.

The admonishing official is encouraged to discuss with the employee the circumstances of the incident involved and to provide appropriate counseling. The employee has a right to such a discussion if the employee requests. With regard to a written admonishment, the employee may present the employee's views in writing and this presentation will be attached to the copy of the admonishment retained by the deciding official.

765 REPRIMAND

765.1 Proposing Official

The Director, Office of *Employee Relations (PER/ER), or designee, for State; the Chief, Foreign Service Division (PM/FSP) or the Chief, Executive Personnel Management (PM/EPM), or designee, for AID; and the Director, Office of Personnel,* or designee, for USIA, may propose to reprimand an employee.

765.2 Deciding Official

The next higher official to the official who proposes to reprimand, or the officials cited in sections 766.2, 767.2, and 767.3 when reprimand is appropriate as a lesser disciplinary action, makes the decision to reprimand. In no event shall the deciding official also be the proposing official in the same matter.

765.3 Proposing Reprimand

a. If, after completion of such investigation as is warranted, and after consideration of the employee's response, if any, the proposing official (except for cases outlined in section 763.2b) decides to propose a reprimand, that official shall inform the employee in writing:

(1) Of the specific reasons in detail;

(2) Of the name of the deciding official to whom the employee may respond;

(3) That the employee may answer orally and/or in writing and submit affidavits or other written statements in support of that answer;

(4) That the employee's response will be considered by the deciding official;

(5) That the employee may have a representative of the employee's choosing (see section 763.8);

(6) Of the employee's status during the notice period (see section 763.3); and

(7) That the employee shall be granted a reasonable amount of official time to receive copies of and review the material relied on to support the reasons in the notice, to secure affidavits or other written statements, and to prepare an answer to the notice.

765.4 Employee's Acknowledgment

The employee shall acknowledge receipt of the letter of proposed reprimand as instructed in that letter.

765.5 Employee's Answer

The employee abroad will have 30 days and an employee in the United States will have 15 days from receipt of the proposal to reprimand to transmit a reply to the deciding official. This period may be extended by the deciding official upon request of the employee. Every effort should be made to approve reasonable requests for extension.

765.6 Action by the Deciding Official

a. After receiving the proposing official's recommendation and the employee's reply, if any, the deciding official will decide:

(1) To withdraw the charges;

(2) To admonish; or

(3) To issue a reprimand.

b. The deciding official will notify the employee of the decision. If the decision is to reprimand, the letter shall:

(1) Include the specific reasons in the advance notice which have been found sustained;

(2) Make specific reference to the employee's right to file a grievance; and

(3) Advise the employee that the record copy of the letter of reprimand will be made a part of the employee's Official Performance Folder.

c. The letter of reprimand will include a specific time period, no less than 12 and no more than 24 months from the effective date, when the letter will be removed by the agency from the Official Personnel Folder, subject to the following condition: Where the period for retention is less than 24 months, the letter will not be removed until the file has been reviewed by one selection board; where the retention period is 24 months, the letter normally will not be removed until the file has been reviewed by two selection boards. An employee is encouraged to follow up to assure such timely removal.

d. The deciding official will forward to the Director, Office of *Employee Relations (PER/ER)* for State; Chief, Employee Relations and Services Division (PM/ERS) for AID; or the Chief, Labor Relations Staff *(M/PPL or VOA/PL)* for USIA, (1) the record copy of the letter of reprimand for inclusion in the employee's Official Performance Folder, and (2) the record on which the decision was based for retention in the appropriate files. In the case of an employee assigned overseas, the letter of reprimand will not be placed in the employee's Official Personnel Folder until 30 days after the receipt of the decision letter by the employee. In the case of an employee assigned in the United States, the letter will not be placed in the employee's Official Personnel Folder until 15 days after the receipt of the letter. Any further delay in carrying out the disciplinary action may be sought by the employee in accordance with section 766.8 (Right To File a Grievance).

766 SUSPENSIONS

766.1 Proposing Officials

The Director, Office of *Employee Relations*, Bureau of Personnel *(PER/ER)* or designee, for State; Chief, *Foreign Service* Division (PM/FPS) the Chief, Executive Personnel Management (PM/EPM) or designee, for AID; or Director, Office of Personnel *(M/P or VOA/P)* or designee for USIA, may propose a suspension against an employee.

766.2 Deciding Officials

A Deputy Assistant Secretary for Personnel for State; the Director, Office of Personnel Management (PM), for AID; or the next higher official above the proposing official for USIA or designees; and the officials cited in sections 767.2 and 767.3 when suspension is appropriate as a lesser action, shall make the decision to suspend the employee.

766.3 Proposing Suspensions

If after completion of such investigation as is warranted, and consideration of the employee's response, if any, the proposing official (except for cases outlined in section 763.1b) decides to propose suspension, that official shall inform the employee in writing:

a. Of the period of the proposed suspension, and of the reasons therefor in detail;

b. Of the name of the deciding official to whom the employee may respond;

c. That the employee has the right to answer orally and/or in writing and to submit affidavits and/or other written statements in support of the answer to the deciding official;

d. Of the employee's right of representation under section 763.8;

e. That any answer will be fully considered by the deciding official;

f. That the employee shall be granted a reasonable amount of official time to receive copies of and review the material relied on to support the reasons in the notice, to secure affidavits or other written statements, and to prepare an answer to the notice; and

g. Of the employee's status during the notice period.

766.4 Employee's Acknowledgment

The employee shall acknowledge receipt of the letter of proposed suspension as instructed in that letter.

766.5 Employee's Answer

The employee abroad has 30 days and an employee in the United States has 15 days from receipt of the proposal to respond in writing and/or orally to the deciding official. Upon written request by the employee, this period may be extended at the discretion of the deciding official. Every effort should be made to approve reasonable requests for extension.

766.6 Action by Deciding Official

a. After receiving the proposing official's recommendation and the employee's reply, if any, the deciding official will decide:

(1) To withdraw the charges;

(2) To admonish;

(3) To issue a reprimand as a lesser disciplinary action; or

(4) To suspend the employee for a specified period of time not to exceed the period proposed.

b. The deciding official will notify the employee of the decision. If the decision is to suspend, the letter shall:

(1) Include the specific reasons in the advance notice which have been found sustained;

(2) Make specific reference to the employee's right to file a grievance;

(3) Advise the employee that the record copy of the letter of suspension will be made part of the employee's Official Performance Folder.

c. The decision letter will include a specific time period, no less than 12 and no more than 24 months from the effective date of the suspension, when the letter will be removed by the agency from the Official Personnel Folder, subject to the following condition: Where the period for retention is less than 24 months, the letter will normally not be removed unless and until the file has been reviewed by one selection board; where the period for retention is 24 months, the letter will normally not be removed unless and until the file has been reviewed by two selection boards. An employee is encouraged to follow-up to assure such timely removal.

d. The deciding official will forward to the Director, *PER/ER*, for State; Chief, Employee Relations and Services Division (PM/ERS), for AID; or the Chief, Labor Relations Staff *(M/PPL or VOA/PL)*, for USIA, (1) the record copy of the letter of suspension for inclusion in the employee's Official Performance Folder, and (2) the record on which the decision was based for retention in the appropriate files. In the case of an employee assigned overseas, the letter of suspension will not be placed in the employee's Official Personnel Folder until 30 days after the receipt of the decision letter by the employee. In the case of an employee assigned in the United States, the letter will not be placed in the employee's Official Personnel Folder until 15 days after the receipt of the letter. Any further delay in carrying out the disciplinary action may be sought by the employee in accordance with section 766.8 (Right To File an Appeal or a Grievance).

766.7 Payroll and Allowances Accounting During Suspension

Absence from duty without pay as a result of suspension shall be recorded on the employee's time and attendance record as provided in instructions issued by the appropriate payrolling office or regional payroll center. Allowances will be paid in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), sections 051.2 and 132.2b(2).

766.8 Right To File An Appeal or a Grievance

a. An employee may grieve under procedures in section 660.

b. A Foreign Service Reserve officer or Foreign Service Staff officer or employee with veteran preference, who has served 1 year of current continuous employment is entitled by the Veterans' Preference Act of 1944, as amended (5 U.S.C. 7551, 7512, and 7701), to appeal a suspension of more than 14 days to the Merit Systems Protection Board within 20 days after the effective date of such suspension.

767 SEPARATION FOR CAUSE

767.1 Authority and Applicability

Under 22 U.S.C. 1007, any member of the Foreign Service may be separated from the Service on account of the unsatisfactory performance of duties, or for such other cause as will promote the efficiency of the Service, with reasons given in writing. No such employee shall be so separated until granted a hearing by the Board of the Foreign Service for State and USIA, or the Board of Review and Appeals for AID, each hereinafter referred to as the Board, and the unsatisfactory performance of duties, or other causes for separation, shall have been established at such hearing, unless the employee waives in writing the right to a hearing. Any employee who is in a probationary status or whose appointment is limited or temporary, shall not have the right to a hearing before the Board except when separation is by reason of misconduct. However, any employee, including a probationary employee, may grieve a disciplinary action under the procedures established in section 660 if not excluded from the jurisdiction of the grievance procedures by those regulations.

767.2 Proposing Officials

The Director General of the Foreign Service and Director of Personnel for State; Director, Office of Personnel Management for AID; or the Director, Office of Personnel *(M/P or VOA/P)* for USIA are authorized to propose separation for cause against an employee and submit the case to the Board for action.

767.3 Deciding Officials

The Secretary of State, the Administrator for AID, or the Director of USIA, as appropriate, shall make the final decision to separate an employee for cause.

767.4 Advance Notification of Unsatisfactory Performance of Duties

Before a separation for cause based on unsatisfactory performance of duties can be proposed under section 767.5, the employee must be notified in writing by the proposing official or designee:

a. Of the job requirements that the employee is failing to meet satisfactorily;

b. That the employee has a 90-day period to bring performance to a satisfactory level;

c. What the employee must do to bring performance to a satisfactory level in the 90-day period; and

d. That the employee's performance will be reevaluated at the end of the 90-day period.

767.5 Proposing Separation for Cause

If after completion of such investigation, as is warranted, and after consideration at the employee's response, if any, the proposing official decides to propose separation for cause, that official shall inform the employee in writing, specifically and in detail:

a. Of the proposal to separate for cause and of the reasons therefor;

b. That the employee has the right to answer orally and/or in writing and to submit affidavits and/or other written statements in support of that answer to the proposing official;

c. That the employee may have a representative of the employee's choosing (see section 763.8);

d. That any answer will be fully considered;

e. That the employee shall be granted a reasonable amount of official time to receive copies of and review the material relied on to support the reasons in the notice, to secure affidavits or other written statements, and to prepare an answer to the notice;

f. Of the employee's status during the notice period;

g. Of the regulations governing the separation for cause process; and

h. That no final action will be taken for at least 30 days from receipt of notice of intent.

767.6 Employee's Acknowledgment

The employee shall acknowledge receipt of the letter of proposed separation for cause as instructed in that letter.

767.7 Employee's Answer

The employee abroad has 30 days and an employee in the United States has 15 days from receipt of the notice of proposal to separate for cause to respond orally and/or in writing to the proposing official. This period may be extended by the proposing official upon request by the employee. Every effort will be made to approve reasonable requests for extensions.

767.8 Action by the Proposing Official

After reviewing the record, the proposing official will decide:

a. To withdraw the charges;

b. To admonish;

c. To issue a reprimand;

d. To suspend the employee for a specified period of time; or

e. To submit to the Board of the Foreign Service or to the AID Board of Review and Appeals, as appropriate, the letter of charges, the employee's reply thereto if any, all related documentation, and the proposing official's recommendation that the employee be separated for cause.

f. If the proposing official decides to submit the case to the Board with the recommendation that the employee be separated for cause, that official also will inform the employee of such action in writing and will specify the employee's status during the hearing process.

767.9 Hearing by the Board

767.9-1 Right to a Hearing

The Board will advise the employee of the employee's rights to a hearing under 22 U.S.C. 1007 and of the time and place of the hearing and of the procedures to be followed.

767.9-2 Action by the Board

See section 760 Appendixes B and C for the Separation Hearing Regulations of the Board of the Foreign Service and the AID Board of Review and Appeals, respectively. 22 CFR Part 15a is the citation where Separation Hearings before the Board of Foreign Service are found. The Separation Hearings procedures were originally published in the **Federal Register**, Vol. No. 69 of Monday, April 9, 1979, pp. 21011-21014. AID Handbook 30, p. 7-5 is the citation where the AID regulations are found.

767.10 Witnesses and Travel Expenses

767.10-1 Producing Witnesses

a. Witnesses will be made available in accordance with Board regulations contained in section 760 Appendixes B and C.

b. Employees of the agency are in a duty status during the time they are made available as witnesses.

c. The agency shall assure witnesses freedom from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony.

767.10-2 Travel Expenses

a. The agency will issue appropriate travel orders to the employee charged and any employees of the agency called as necessary witnesses by the Board or by the hearing officer(s).

b. Necessary witnesses other than the employees of the agency, who are called by the Board or the hearing officer(s), who do not reside within commuting distance of the place where the hearing is being held, are entitled to travel expenses as follows:

(1) Witnesses who are employed by other Government civilian agencies or the uniformed or similar services will be allowed travel expenses and per diem appropriate under travel regulations of their agency or service; or

(2) Witnesses who are not Government employees and who are not in the uniformed or similar services of the United States will be allowed travel expenses and per diem in lieu of subsistence in accordance with agency regulations, as authorized by 5 U.S.C. 5703.

767.11 Action by the Secretary, the Administrator, or the Director

After considering the findings of fact, conclusions of law, and recommendations of the appropriate Board, the Secretary, the Administrator, or the Director, as appropriate, shall decide and notify the employee in writing of the decision on separation for cause or decision for lesser action, including which of the specific reasons in the advance notice have been found sustained and those which have not been sustained, and of any appeal rights the employee may have (see section 767.12). If the appropriate Board has designated a hearing examiner to conduct the hearing and prepare findings of fact, conclusions of law, and recommendations for the

Board, and, if the Board's recommendations refer to or incorporate the findings of fact, conclusions of law, or recommendations of the hearing examiner, the Secretary, the Administrator, or the Director, as appropriate, shall also specifically indicate which of the findings of fact, conclusions of law, or recommendations of the hearing examiner are adopted and which are rejected. A copy of the decision letter will be made a part of the employee's Official Performance Folder, except that if the letter is favorable, it will be so filed only if the employee consents. If the letter does not provide for separation, it will include a specific date for its removal from the Folder as provided in the pertinent section of these regulations for whatever disciplinary action is determined. The record on which the decision is based will be retained in the files of the Executive Secretary of the Board of the Foreign Service for State and USIA and, for AID, will be retained by Employee Relations and Services Division (PM/ERS). The letter which is included in the employee's Offical Performance Folder shall not include reasons which were not found sustained.

767.12 Right To Appeal

Only a Foreign Service Reserve officer or Foreign Service Staff officer or employee with veteran preference, who has served 1 year of current continuous employment, is entitled by the Veterans' Preference Act of 1944, as amended (5 U.S.C. 7511, 7512, and 7701), to appeal a separation for cause to the Merit Systems Protection Board within 20 calendar days after the effective date of such separation.

768 EFFECTS OF SEPARATION FOR CAUSE ON PARTICIPATION IN THE FOREIGN SERVICE, CIVIL SERVICE, OR OTHER GOVERNMENT RETIREMENT SYSTEM

Eligibility to retirement benefits under the Foreign Service, Civil Service, or other Government retirement system is affected if an employee is separated on account of unsatisfactory performance of duties or for such other cause as will promote the efficiency of the Service (section 767, Separation for Cause). For further information on how retirement benefits are affected, an employee should consult the applicable regulations (section 670 for the Foreign Service Retirement and Disability System; FPM 831-1 Subchapter 11 for the Civil Service Retirement System).

End Uniform State/AID/USIA Regulations.

769 (Unassigned)

(TEXT CONTINUED ON PAGE 5A-12)

Status of Employee During Disciplinary Action (Including Separation for Cause)

APPENDIX A

TYPE OF SITUATION	DUTY STATUS	LEAVE ON REQUEST	ENFORCED LEAVE	NONDUTY STATUS WITH PAY
I. Emergency situation created by an employee's conduct or mental or physical condition which constitutes an immediate threat to Government property or security, to the well being of the employee, fellow workers, or the public, in which it is in the interest of the Agency to exclude the employee from all or a part of the official premises, and the Agency has not had an opportunity to appraise the situation and decide whether to initiate action under 3 FAM 760.	No	Yes	Yes 1/	Yes
II. During investigation of an employee for alleged wrong-doing preliminary to a determination to initiate action under 3 FAM 760, when:				
A. An employee presents himself or herself for duty following a period of enforced leave after an immediate emergency (see I. above) has been relieved, and the employee's supervisor, proposing, or deciding official determines that the employee is ready, willing, and able to perform duty but should continue to be excluded from all or a part of the official premises;	No	Yes	No	Yes 2/
B. It is in the interest of the Agency, to exclude the employee from all or a part of the official premises even though the employee is ready, willing and able to work;	No	Yes	No	Yes 2/
C. The employee is ready, willing, and able to work, and the supervisor, or proposing, or deciding official finds no reason why the employee should not be permitted to work.	Yes	Yes	No	No

APPENDIX A--Continued

TYPE OF SITUATION	DUTY STATUS	LEAVE ON REQUEST	ENFORCED LEAVE	NONDUTY STATUS WITH PAY
III. During period from decision to recommend action to initiate reprimand to effective date of the reprimand, if any.	Yes 3/	Yes	No 4/	No
IV. During period from decision to recommend action to initiate suspension to the effective date of the suspension, if any.	Yes 3/	Yes	No 4/	Yes 2/
V. During period from decision to recommend action to initiate separation for cause through the date of separation, if any.	Yes 3/	Yes	No 4/	Yes 2/

1/ The proposing officer has full authority to require employee to absent himself or herself from duty and charge such absence to appropriate conventional leave. Such leave will be limited to five (5) work-days, unless extended by the appropriate action official.

2/ Employee may be placed in a nonduty status with pay and without charge to leave for such time as is necessary to effect resolution of the charges.

3/ Unless circumstances in I., II.A., or II.B., above, apply.

4/ Unless circumstances in I., above, apply.

UNIFORM STATE/USICA REGULATIONS

22 CFR Part 15a
(Federal Register, Volume 44, No. 69, April 9, 1979, pp. 21011-21014)

Separation Hearings Before the Board of the Foreign Service

PART 15a—SEPARATION HEARINGS BEFORE THE BOARD OF THE FOREIGN SERVICE

Sec.
15a.1 Initiation of procedures.
15a.2 Designation of hearing officer or panel.
15a.3 Action by the Executive Secretary.
15a.4 Rights of the charged employee.
15a.5 Agency representation at the hearing.
15a.6 Documentary material.
15a.7 Pre-hearing conference.
15a.6 Interrogatories.
15a.9 Hearing procedure.
15a.10 Post-hearing argument.
15a.11 Report of the hearing officer.
15a.12 Certification of the record.
15a.13 Action by the Board.

Authority: 22 U.S.C. 2658, as amended; 22 U.S.C. 842; 22 U.S.C. 1007.

§ 15a.1 Initiation of procedures.

No Foreign Service officer or employee may be separated from the Service for cause until he or she has been granted a hearing by the Board of the Foreign Service. The unsatisfactory performance of duties, or other cause for separation, shall be established at such hearing prior to separation, unless the employee waives, in writing, the right to a hearing.

Upon receipt of a memorandum from the Director General of the Foreign Service of the State Department or the Director, Office of Personnel Services of the International Communication Agency recommending the separation of a Foreign Service employee from the Service for cause and attaching the relevant documentation, the Executive Secretary will send copies of the memorandum and attachments to members of the Board for a decision as to how to proceed. The Board may decide to hold a meeting to discuss the case or to proceed immediately to a hearing.

§ 15a.2 Designation of hearing officer or panel.

(a) If the Board decides that a reasonable basis exists for further processing of a separation case and that a hearing must therefore be held in accordance with law, it may designate from among its members and alternate members a hearing officer or officers to conduct an official hearing for the Board. If a panel of officers is designated to act as a hearing panel, the senior Foreign Service officer shall be the chairperson. (Hereinafter in these regulations the term "hearing officer" refers to the panel chairperson if a hearing panel is used.) Alternatively, the Board may authorize its Executive Secretary to engage a qualified administrative law judge with experience in employment-management relations to act as hearing officer.

(b) If the hearing is held by the Board, or before a Board member or panel, a procedural advisor from outside the foreign affairs agencies, experienced in the conduct of hearings related to the disciplining or separation of employees, will advise the person conducting the hearing regarding procedural rulings in order to ensure due process. If the hearing is held before an administrative law judge, no procedural advisor is necessary.

(c) If any Board member has either direct personal knowledge of the facts and circumstances presented in a given case or close personal knowledge of the individual against whom separation proceedings have been brought, that Board member shall disqualify himself/herself from participation or decision-making in the proceeding, and an alternate member will be assigned. If neither the principal nor the alternate may serve because each is disqualified, then the agency head will designate a disinterested special *ad hoc* member to sit as a Board member in the given case.

(d) No representative, witness, or other person involved in the personnel action leading to the separation proceeding or in the proceeding may communicate unilaterally with the Board or its members regarding the merits of the case pending the Board decision except as set forth in section 15a.13.

§ 15a.3 Action by the Executive Secretary.

(a) Once the Board has designated a hearing officer or panel, the Executive Secretary of the Board will advise the charged employee of his/her rights as set forth in section 15a.4 of these regulations, of the time and place of the hearing and/or pre-hearing conference, and the legal authority therefor. The charged employee will be notified at least 25 working days prior to the hearing or pre-hearing conference.

(b) The employee will be provided with copies of all materials concerning the charges which have been provided by the agency to the Board of the Foreign Service. The employee's representative will also be provided with similar copies of unclassified material but will receive copies of classified material only if he possesses an appropriate security clearance. Classified material will be kept under appropriate safeguard in accordance with the security regulations.

§ 15a.4 Rights of the charged employee.

The charged employee will be afforded the following rights:

(a) To be present at the hearing.

(b) To be accompanied by or represented by counsel engaged by the employee or by any other person who accepts the employee's request to represent him/her. If classified material is to be considered at the hearing, the agency will use its best efforts to obtain expeditiously an appropriate security clearance for the employee's representative. If the representative is not cleared, for any reason, and the employee still desires the uncleared person to represent him, this will be allowed on the understanding that the employee's uncleared representative will not be afforded access to classified material at any stage of the proceedings.

(c) To present witnesses, examine by interrogatories witnesses whose location at the time of the hearing renders personal appearance impractical, cross-examine witnesses presented by the agency, present any other evidence or material relevant to the Board deliberations and make oral presentations and arguments. The employee and representative(s) who are under the control, supervision, or responsibility of the foreign affairs agencies shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the employee's case. (The right to present witnesses does not carry with it the right to payment of travel expenses for those witnesses, except insofar as provided in agency regulations.)

(d) To receive a copy of the transcript of the hearing, including all testimony and exhibits, except those portions which are classified. Classified portions of the transcript and exhibits will be kept on file in the office of the Executive Secretary of the Board of the Foreign Service where they may be reviewed by the employee. (The employee's representative may also review any such material for which the representative has the appropriate security clearance.)

(e) To receive a written report of the hearing officer or panel as set forth in

section 15a.11 summarizing the facts of the case, rendering credibility resolutions where necessary, and discussing and deciding the issues of law that arose at the hearing. If the hearing officer was charged with recommending to the Board the disposition of the case, the recommendation shall be contained in his/her report which shall contain the rationale therefor.

§ 15a.5 Agency representation at the hearing.

The agency will be represented at the hearing by not more than two representatives for the purpose of establishing the agency's case against the charged employee and ensuring that the agency's policies and procedures are accurately presented.

§ 15a.6 Documentary material.

At least 10 days prior to the pre-hearing conference, the Executive Secretary will provide the hearing officer or panel chairperson with the action official's letter of charge, the employee's response and the action official's final letter indicating the agency's intention to proceed with separation.

§ 15a.7 Pre-hearing conference.

(a) Prior to the hearing the hearing officer shall conduct a pre-hearing conference with the charged employee, his representative, and the principal agency representative. The purpose of the conference will be, where possible, to define and narrow the issues; to establish the scope of the material to be considered at the hearing, the exhibits to be presented, the number and identity of the witnesses, and the need for and timing of preparation and submission of interrogatories; and to address any procedural matters which the hearing officer or either party wishes to raise prior to commencement of the hearing.

(b) The agency and the employee will submit to the hearing officer, prior to or at the prehearing conference, their lists of proposed hearing witnesses along with statements as to the intended scope of their testimony. The hearing officer, after considering the asserted justification for witness presence and any objection thereto offered by the opposing party, will approve or disapprove individual witness requests. In approving the calling of a witness for the charged employee from a post abroad, the hearing officer shall balance the importance of a witness (as compared to testimony by interrogatory) and the cost to the U.S. Government of transporting the witness. (See 3 FAM 764.6 for regulations concerning travel expenses for witnesses.)

(c) If so requested by either party, the hearing officer, through the Executive Secretary of the Board of the Foreign Service, will advise those witnesses whose appearance before the Board the hearing officer has approved concerning the date and time of the hearing and, in the name of the Board of the Foreign Service request their appearance. If any prospective witness is unable to appear in person, but is willing to testify by interrogatory, the hearing officer will allow the requesting party reasonable time to present a written interrogatory in accordance with the above described procedure, delaying if necessary the scheduled hearing date.

(d) If at any time prior to the hearing either party requests a delay in the hearing date, the hearing officer has the authority to reschedule the hearing, if appropriate.

§ 15a.8 Interrogatories.

(a) At an appropriate time during the pre-hearing conference or during the hearing either party may submit written interrogatories to the hearing officer to be forwarded to individuals who are unable to appear in person. Interrogatories must be accompanied by a brief statement of the intended scope of the testimony to be elicited. The hearing officer will approve or reject specific questions as appropriate. He may also grant the opposing representative the opportunity to pose questions in cross-examination. The hearing officer will, after hearing any objections, rule on the relevance and materiality of the questions in cross-examination and at his discretion may permit the submitting party to withdraw or modify previously posed questions in such a manner as to render the cross-examination questions unnecessary. The hearing officer may also, at his discretion, grant to the submitting party the right to pose a final sequence of redirect questions relevant to matters dealt with in cross-examination. The hearing officer, through the Executive Secretary of the Board of the Foreign Service, will then dispatch each interrogatory to the person to whom it is directed with the request that his answers be sworn before a United States Consular Officer or, within the U.S., a duly authorized notary public.

(b) The hearing officer will confirm or reschedule if necessary the date, time, and place for the hearing after consultation with both parties, taking into account the anticipated time necessary for receipt of outstanding interrogatories.

§ 15a.9 Hearing procedure.

(a) The hearing will be conducted by the designated hearing officer or panel. If the charged employee fails to appear at this hearing without good cause, the hearing may be held and the case shall be decided on the basis of all available information notwithstanding the employee's absence, and such absence shall be considered *prima facie* evidence of the waiver of his right to be present.

(b) The hearing will be closed to all persons who are not direct participants or whose presence has not been requested by the charged employee, or the Department's representative. The hearing officer shall decide all requests for outside persons to attend the hearing and he may exclude them, even if admitted, at any point in the proceedings at his/her discretion. However, no person shall be permitted to attend the hearing when classified material is being discussed, unless that person possesses the appropriate security clearance. If a hearing panel is used, the hearing shall at no time be conducted in the absence of any member unless the charged employee so agrees.

(c) The hearing officer is empowered to call witnesses, examine witnesses, and to request the production of such documentary evidence as he/she may regard pertinent. If the hearing officer wishes to call witnesses, he/she will notify the parties of their identity and the intended scope of their testimony. The hearing officer shall control the course of the hearing and ensure its proper decorum, and may postpone or continue the hearing from time to time in his/her discretion.

(d) The hearing officer may at his/her own initiative, or on the objection of either party, exclude testimony (either by interrogatory or in person) or evidence which he/she deems immaterial or irrelevant to the deliberations and decisions of the Board or merely cumulative and unduly repetitious. (If a panel is used, it may reverse such rulings by the panel chairperson by majority vote if it so elects.) The hearing officer shall not be bound by the technical legal rules of evidence, but shall assure that irrelevant, immaterial, or unduly

repetitious evidence is excluded from the proceeding. Decisions of the Foreign Service Grievance Board or of reviewing courts involving the employee and the agency will be treated by the hearing officer as determinative of the issues and contentions ruled upon in such decisions, and neither party may reargue such matters at the hearing unless the case is currently pending in court.

(e) Hearing testimony shall be recorded *verbatim* and shall be transcribed and made a permanent part of the case record. Proposed corrections to the transcript may be made by either party. These proposed corrections will be ruled upon by the hearing officer and his decision in this matter will be final. Copies of the transcript will be provided to both parties, except that no portion of the transcript which is classified may be provided to persons without appropriate security clearance or may be removed from the Department of State building without permission.

(f) All witnesses shall testify subject to oath or affirmation administered by the administrative law judge, or, if a hearing panel is used, by an individual authorized to administer oaths or affirmations.

(g) Prior to accepting evidence, the hearing officer will hear any objections posed by the charged employee or the Agency's representative to pre-hearing rulings of the hearing officer. (If a hearing panel is employed, the rulings will be decided by a majority of the panel, the chairperson of the panel voting along with other members.) In the course of the hearing the hearing officer will rule on any questions of procedure and admissibility of evidence which arise (subject, in case a panel is used, to reversal by a majority of the entire panel should panel members so elect).

(h) After the hearing officer or panel has acted on any objection or motion raised by the parties, the agency's representative shall open the agency's case against the charged employee. After summarizing the substance of the action officer's charge, the agency's representative may call witnesses previously approved by the hearing officer, read and/or introduce into the record interrogatories from witnesses unable to be present, present exhibits, and otherwise endeavor to establish the agency's case within the bounds of relevancy and materiality. The charged employee may cross-examine the witnesses. A redirect and recross-examination of the witnesses if appropriate may be permitted by the hearing officer.

(i) When the agency has rested its case, the charged employee may outline the substance of his/her case and may call witnesses previously approved by the hearing officer to adduce evidence on the employee's own behalf within the bounds of relevancy and materiality. During this process, the charged employee may present exhibits and read into the record the response to interrogatories submitted on his/her behalf by the hearing officer to witnesses unable to be present. The agency's representative may cross-examine the witnesses. A redirect and recross-examination of the witnesses if appropriate may be permitted by the hearing officer or panel.

(j) Either party may elect not to present at the hearing specific interrogatories already obtained, but if a specific interrogatory is presented it must be presented in its totality and without abridgement or deletions. At the hearing, either party may also call additional witnesses or request additional interrogatories not previously approved by the hearing officer for good cause and with the approval of the hearing officer. In such an event, a recess in the hearing will be granted by the hearing officer if necessary.

(k) Upon request by the hearing officer, or upon a request of the employee deemed relevant and material by the hearing officer, an agency shall promptly make available at the hearing or by deposition any witness under its control, supervision, or responsibility, except that if the hearing officer determines that the presence of such witness at the hearing is required for just resolution of the case, then the witness shall be made available at the hearing, with necessary costs and travel expenses provided by the agency in accordance with the provisions of 3 FAM 764.6.

§ 15a.10 Post hearing argument.

After all the evidence has been presented, either party may present oral concluding arguments, submit a post-hearing brief, or both.

§ 15a.11 Report of the hearing officer.

Upon completion of hearing and after consideration of any post-hearing briefs filed by the parties, the hearing officer or panel will prepare a report setting forth requisite findings of fact, resolutions of credibility and conclusions of law and, if so requested by the Board, a recommendation with respect to the disposition of the case.

§ 15a.12 Certification of the record.

The hearing officer will then certify the hearing record to the Board, including in the record the action official's charge, the employee's response and other relevant exhibits, a transcript of the testimony, interrogatories, his/her report and any other material relevant to the Board's consideration of the case.

§ 15a.13 Action by the Board.

(a) The Board will consider the record certified to it by the hearing officer. If either party desires to submit a statement or brief to the Board for its consideration before making a final decision on the case, that party may do so within 20 calendar days from service upon it of the hearing officer's report; however, the submitting party must send a copy of the statement or brief to the opposing party. Each party may also present one counterstatement or rebuttal to the brief of the other party within 10 days of the service upon it of the brief of the other party.

(b) If the employee waives the hearing, the Board will consider the documents presented by the action official and have these documents and any other information it may require entered in the record in order to gain a full understanding of the case. The employee may elect to make a written presentation and may submit affidavits on his/her behalf. Copies of all information entered in the record will be sent to the employee and the agency, and the parties will be informed if the Board initiates a request for additional information.

(c) On the basis of the record certified by the hearing officer/panel and any additional written submissions referred to above, the Board, in the exercise of its own judgment, will render its findings as to whether or not the unsatisfactory performance of the employee or other cause of separation has been established. A finding of unsatisfactory performance must at a minimum be supported by substantial evidence. A finding of any other cause for separation must be supported by at least a preponderance of the evidence. The Board will also recommend to the head of the agency concerned the action it considers to be appropriate under the circumstances of the case.

For the Chairman, Board of the Foreign Service.

Dated: March 26, 1979.

William B. Grant,
Executive Secretary, Board of the Foreign Service.

[Departmental Regulation 108.772]

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UNIFORM STATE/AID REGULATIONS

7H. Board of Review and Appeals - AID Foreign Service

1. General

a. Section 637(a) of the Foreign Service Act of 1946, as amended, provides for the separation of a Foreign Service employee for unsatisfactory performance or for other cause which will promote the efficiency of the Service. It provides further that:

> "...no such officer or employee shall be so separated until he shall have been granted a hearing by the Board of the Foreign Service and the unsatisfactory performance of his duties, or other cause for separation, shall have been established at such hearing, unless he shall have waived in writing his right to a hearing. The provisions of this section shall not apply to... (any) employee of the Service who is in a probationary status or whose appointment is limited or temporary, except when separation is by reason of misconduct."

b. With respect to AID Foreign Service personnel covered by this section (see 7H3), the functions of the Board of the Foreign Service are carried out by the AID Board of Review and Appeals, hereinafter referred to as "the Board."

c. Detailed procedures for effecting separations for the reasons cited in the above quotation are set forth in HB 30, Ch 5.

2. Legal Basis

a. This section implements that portion of Section 637(a) of the Foreign Service Act of 1946, as amended, quoted above, which requires a hearing by a Board in certain separation actions.

b. State Department Delegation of Authority No. 104, as amended, dated November 3, 1961, delegates to the Administrator of AID the authority available to the Board of Foreign Service under the Foreign Service Act of 1946, as amended.

3. Applicability

A U. S. citizen employee holding a Foreign Service Reserve or Foreign Service Staff appointment is entitled to a hearing by the AID Board of Review and Appeals:

a. If he holds an appointment without time limitation, and his separation is proposed because of unsatisfactory performance of his duties or other cause as will promote the efficiency of the Service.

b. If his separation is proposed because of misconduct, regardless of the nature or tenure of his appointment.

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4. Policy

It is Agency policy that hearings by the Board of Review and Appeals be conducted in a fair and impartial manner. To this end, the employee concerned has the right to be present, to have a representative, to introduce pertinent evidence, to have witnesses whose appearance has been approved by the Board appear in his behalf, and to examine a transcript of the proceedings when the hearing is concluded. Furthermore, membership on the Board is restricted to persons who have no direct connection with the case under review.

5. Board Membership

The Board is composed of three regular members and two alternates all of whom serve on an ad hoc basis. Members and alternates are appointed by the Administrator of AID, on nomination by the Director, Office of Personnel and Manpower, to serve either in AID/W or in the field, as circumstances require. At least one of the members is to be an AID Foreign Service employee in the same general occupational field as the employee whose case is being heard. Personnel are appointed as members who have neither a supervisory nor subordinate relationship to the employee concerned, or to an official directly associated with the charges, and who, prior to their service on the Board, have taken no part in investigating the case, preferring charges, or preparing the recommendation for separation. The Administrator of AID designates one of the regular members to serve as chairman. Alternates serve only in the absence of regular members.

6. Functions and Responsibilities

a. The Board is responsible for conducting a hearing to ascertain whether the charges used as the basis for proposing the employee's separation are established. In fulfilling this responsibility, the Board:

(1) Convenes in a preliminary meeting to establish a plan for the hearing, and to:

(a) Receive from the employee charged and the Agency representative the names of witnesses each proposes to call to the extent such information can be made available.

(b) Approve or disapprove the appearance of witnesses proposed by the employee or the Agency representative. Approval is granted only for the appearance of those witnesses whom the Board considers can contribute significant testimony.

(c) Call, on its own motion, such witnesses as it considers necessary.

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(d) Determine whether the hearing should be held in AID/W or at a mutually convenient location abroad.

(2) Takes testimony and evidence, reviews pertinent information, asks questions, and otherwise gathers facts necessary to reach its conclusions.

(3) Postpones or recesses hearings from time to time in its discretion, and otherwise controls the course of the proceedings. This shall include the modification of the plan for the hearing to permit attendance of additional witnesses.

(4) Renders an opinion as to whether the basis for the separation action has been established, and makes appropriate recommendation to the Administrator of AID.

b. The Office or Bureau which prepared the notice of intent to separate:

(1) Requests the Employee Relations Branch, Office of Personnel and Manpower (PM/PS/ER), to arrange a hearing, if employee is entitled to such hearing.

(2) Prepares the case (in consultation with line officials) in support of charges upon which the proposed separation is based.

(3) Designates a representative (or representatives) to present its case at the hearing.

(4) Proposes to the Board the names of witnesses to give evidence in support of the charges against the employee or otherwise in connection with the proposed separation action.

c. Employee Relations Branch (PM/PS/ER)

(1) Recommends to the Director, SER/PM, potential Board members.

(2) Arranges a time and place for the hearing, which may be held in AID/W or in the field.

(3) Arranges for the attendance of all persons concerned.

(4) Provides the Board with necessary staff assistance if the hearing is held in AID/W.

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7. Conduct of Hearing

a. Timing

Normally, within ten workdays following referral of the case, the Chairman convenes the hearing, which is held during regular working hours.

b. Presence of Employee

(1) The employee charged has the right to be present throughout the hearing, to present testimony orally and in writing, to be accompanied or represented by one representative of his own choosing, to present witnesses whose presence is approved by the Board, and to cross-examine other witnesses.

(2) If the employee fails to appear at the hearing, it is held on the basis of available information, notwithstanding the employee's absence, unless, he has waived in writing his right to a hearing.

c. Opening Statement

In convening the hearing, the Chairman states the purpose of the hearing, introduces persons in attendance, and informs attendees of the Board's plan for the conduct of the hearing. The statement should mention that the proceedings are to be informal and that legal rules of evidence are not to be applied.

d. Transcript of Testimony

(1) Testimony is taken verbatim, transcribed, and made a permanent part of the record of the case. The transcript includes a copy of the charges and the reply.

(2) The employee or his representative may inspect the transcript and the exhibits presented, except insofar as modification of this privilege may be necessary because of security regulations or foreign policy considerations. The employee may, at any time prior to final consideration of the case by the Board, enter a signed dissent to any statement in the transcript which he believes to be inaccurate.

8. Board Recommendation and Decision by Administrator

a. The Board, upon completion of the hearing:

(1) Convenes in closed session to document its findings, and to determine whether any or all of the charges set forth in the letter of intention to separate have been established.

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(2) Forwards its recommendations, including its findings and conclusions and any dissenting opinions, through the Director, Office of Personnel and Manpower, to the Administrator of AID within ten workdays following the close of the hearing. A transcript of the hearing and any dissenting statement by the employee accompany the recommendation to the Administrator.

b. The Administrator of AID, on the basis of the transcript of the hearing, the Board's findings, and comments thereon by the Director, Office of Personnel and Manpower, makes the decision and signs the notice to the employee.

c. The responsible personnel office forwards to the employee the written notice of decision within five days thereof. Separation actions are issued by the AID/W personnel office which advises the Mission of such action to permit field issuance of separation travel authorization, where appropriate.

9. Travel

a. Travel of Employee

If the hearing by the Board is held at a place other than the employee's current post of assignment, the employee may be issued appropriate travel orders in accordance with AID travel regulations.

b. Travel of Witnesses

(1) AID Employees

AID employees called by the Board, or approved by the Board as witnesses, are considered to be on consultation if the hearing is held at a place other than the post of duty. Their travel expenses and per diem to the place of hearing are therefore authorized in accordance with AID foreign service travel regulations or Standardized Government Travel Regulations, as appropriate.

(2) Witnesses Other Than AID Employees

Witnesses other than AID employees who are called by the Board, or approved by the Board, and who do not reside within commuting distance of the place where the hearing is held are entitled to travel expenses as follows:

(a) A witness who is employed by another Government agency may be allowed travel expenses and per diem pursuant to the AID foreign service travel regulations if such regulations are applicable to him in his employing agency. Otherwise, he is entitled to travel expenses and per diem pursuant to Standardized Government Travel Regulations.

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(b) A witness from the armed forces is allowed travel expenses and per diem pursuant to the regulations pertaining to his service for services performed for another Government agency.

(c) A witness who is neither employed by another Government agency nor a member of the armed forces is allowed travel expenses and per diem allowances in accordance with travel regulations governing invitational travel.

10. Resignation

If an employee submits his resignation during the Board proceedings, the resignation is accepted and appropriate notification is made on the AID 4-520, Notification of Personnel Action, describing the circumstances under which the employee resigned. (See also Ch 1B.)

622 SUITABILITY GUIDELINES FOR APPOINTMENT AND CONTINUED EMPLOYMENT

(TL:PER-79 12-5-87)
(Uniform State/AID/USIA)

622.1 Applicability

This regulation applies to applicants for employment in and to employees of the Foreign Service of the Department of State, the Agency for International Development (AID), and the U.S. Information Agency (USIA).

622.2 Purpose

This regulation provides guidelines for use by the Department, AID, and USIA in deciding on an applicant's suitability for appointment in the Foreign Service, in taking disciplinary action on an employee, or in deciding on an employee's continued employment in the Foreign Service. The key provisions of this regulation include:

a. The general considerations of the connection between (1) conduct respecting effective performance in the position applied for or in which employed; (2) efficiency of the Service; and (3) the national security or foreign relations of the United States (see section 622.7, General Considerations);

b. An illustrative list of the kinds of conduct which could be grounds for disciplinary action or separation for cause (see section 622.9, Standards of Conduct) or disqualification of an applicant for employment;

c. Factors that could be mitigating or aggravating conditions in judging the seriousness of an offense and in determining the action to be taken based on the offense (see section 622.8, Evaluation Factors To Be Considered); and

d. An explanation of certain kinds of conduct (see section 622.10, Explanation of Certain Issues).

622.3 Authority

a. 5 U.S.C. 301 authorizes the Secretary to prescribe regulations governing the conduct of the Department's employees; 22 U.S.C. 842 authorizes the Secretary to prescribe regulations in relation to the duties, functions, and obligations of officers and employees of the Service and the administration of the Service.

b. For AID. Department of State Delegation of Authority No. 104, as amended, and 22 U.S.C. 2381(a) authorize the Administrator to exercise the authorities described above.

c. For USIA. 5 U.S.C. 302, Reorganization Plan 8 of 1953, and Public Law 90-494 empower the Director to exercise the authorities described above.

622.4 Definitions

a. "Agencies" means the Department of State, the Agency for International Development (AID), and the U.S. Information Agency (USIA).

b. "Applicant" means a person who has applied for employment in the Service.

c. "Employee" means a U.S. citizen employee of the Service, wherever serving.

d. "Individual" means an applicant or employee.

e. "Service" means the Foreign Service of the agencies.

622.5 Policy

The attainment of U.S. foreign policy objectives depends substantially on the confidence of the public (both American and foreign) in the individuals selected to serve in the Foreign Service. The agencies, therefore, require the maintenance of the highest standards of conduct by employees of the Foreign Service, including an especially high degree of integrity, reliability, and prudence. Given the representational nature of employment in the Service and the diplomatic privileges and immunities granted employees of the Service abroad, it is necessary that employees observe such standards during and after working hours or when the employee is on leave or in travel status.

In its suitability determinations, the agencies will be guided by: (1) the requirement to protect the interests of the U.S. Government and to promote the efficiency of the Service; and (2) the need to assure fair and impartial treatment of the individuals concerned, and care in the process to avoid any unwarranted invasion of privacy.

622.6 Action Against Applicants or Employees

a. Applicant

The agencies may disqualify an applicant for any of the reasons in section 622.9 (Standards of Conduct).

b. Employees

In accordance with the Foreign Service Act of 1946, as amended, and applicable regulations, the

agencies may discipline or separate an employee when such action will promote the efficiency of the Service for any of the reasons stated in section 622.9 or as set forth in uniform State/AID/ USIA regulations in FAM 620, 760, and 790 for State; Handbook 30, chapters 5 or 6 for AID; and MOA V-B 770 for USIA. In making determinations under this paragraph, the agencies shall consider, among other factors, those enumerated in section 622.8.

622.7 General Considerations

The following general considerations will be of primary importance to the agencies in making their suitability determinations:

a. Whether the conduct of the individual may reasonably be expected to interfere with or prevent effective performance in the position applied for or employed in;

b. Whether the conduct of the individual may reasonably be expected to interfere with or prevent effective performance by the agencies of their duties and responsibilities; or

c. Whether the conduct of the individual may reasonably be expected to affect adversely the national security or foreign relations of the United States.

622.8 Evaluation Factors To Be Considered

The following factors are used, as appropriate, by the agencies in evaluating suitability:

a. Whether the individual's conduct is such that it can reasonably be expected to interfere with or prevent effective performance in the position employed in or being considered for;

b. Whether the individual's conduct is such that it can reasonably be expected to interfere with effectively carrying out the policies and programs of the U.S. Government, including the responsibility to present a favorable impression abroad of the United States;

c. Whether the individual's conduct is such that it can reasonably be expected to affect so adversely other employees as to prevent the efficient performance of their duties and responsibilities;

d. The notoriety of the individual's conduct;

e. The conditions of service applicable to an employee and the position, function or service in which an individual may serve or is serving, including its representational nature;

f. The sensitivity of the position and the security clearance required;

g. The nature, seriousness, frequency, and recency of the conduct and the age of the individual at the time of the conduct;

h. Contributing social or environmental conditions, including the voluntariness of the individual's conduct;

i. The absence, presence, or sufficiency of rehabilitation or efforts toward rehabilitation. The individual's voluntariness and candor in discussing a matter of proper concern with appropriate authorities shall be considered in evaluating the sincerity of the individual's efforts toward rehabilitation. For details of the agencies' rehabilitation policies concerning alcohol and drug abuse, see uniform State/AID/USIA regulations in section 695;

j. Whether the conduct occurred abroad or in the United States, at a post of assignment or in a third country, and during working hours or while off-duty; and

k. Any other relevant circumstances pertaining to the conduct or any other relevant consideration which the employee or the agency may wish to offer.

622.9 Standards of Conduct

To maintain the efficiency of the Service, the following, while not all inclusive, may constitute grounds for taking disciplinary or separation action against an employee, or disqualifying an applicant after due consideration of the factors in section 622.8 (Evaluation Factors To Be Considered):

a. Misconduct of applicants in prior employment;

b. Misconduct, either in itself or as a result of attendant circumstances, impeding or preventing the performance of duties, or conduct contrary to the customs, mores, or laws of the local community, as communicated to employees by the agency or post in writing to the extent practicable;

c. Criminal, dishonest, or notoriously disgraceful conduct (see section 622.10n);

d. An intentional and material false statement, deception, or fraud in the examination or appointment process in response to a proper inquiry;

e. Refusal to furnish testimony or information to proper authority in response to specific and relevant inquiry concerning the individual's job performance, conduct, or such other matters as (1) qualifications for the position, function, or service under consideration or held, or (2) qualification for a security clearance;

f. Repeated or habitual use to excess of intoxicating beverages affecting the ability to perform the duties and responsibilities of the employee's position (see section 622.10, Explanation of Certain Issues);

g. Trafficking in or abuse of narcotics, drugs, or any substance listed under the Controlled Substance Act (section 812, Title 21, U.S.C.); and/or trafficking in or abuse of narcotics, drugs, or other controlled substance in violation of the law of the country or jurisdiction in which the individual was or is located at the time of the offense (see section 622.10f);

h. Reasonable doubt as to the loyalty to the U.S. Government of the individual involved;

i. Conduct which furnishes substantial reason to believe that the individual may be or is being subject to coercion, improper influence, or pressure which is reasonably likely to cause the individual to act contrary to the national security or foreign relations of the United States;

j. Conduct which, in the opinion of competent medical authority, is evidence of an unstable personality, impaired judgment, or emotional disorder, furnishing substantial reason to believe that the individual is unsuited for the Service or the position for which the individual is applying or is unsuited for the Service or the position in which the individual is serving; or

k. Conduct which clearly shows poor judgment or lack of discretion which may reasonably affect an individual or the agency's ability to carry out its responsibilities or mission.

622.10 Explanation of Certain Issues

a. Sexual Activity

The agencies recognize that, in our society, there are considerable differences of opinion in matters of sexual conduct, and that there are some matters which are of no concern to the U.S. Government. However, serious suitability concerns are raised by sexual activity by an individual which reasonably may be expected to hamper the effective fulfillment by the agencies of any of their duties and responsibilities, or which may impair the individual's position performance by reason of, for example, the possibility of blackmail, coercion, or imoroper influence. The standards of conduct enumerated in section 622.9 are of particular relevance in determining whether the conduct in question threatens the mission of the employing agency or the individual's effectiveness.

b. Dishonesty

Any intentional false statement or misrepresentation concerning a material fact on any official form, such as pay or leave records, travel vouchers, reimbursement of expenses, eligibility for allowances, etc., may result in disciplinary action or separation. A material fact is defined as a fact requiring serious consideration by reason of having a certain or probable bearing in the proper determination of an applicant's suitability for appointment, or an employee's suitability for continued service. In addition, any other activity or conduct, such as theft, forgery, lying, misuse of Government property, and the like, which clearly indicates that the individual is dishonest or unreliable may result in nonselection, disciplinary action, or separation, whether criminally prosecuted or not, if such activity or conduct falls also within the specific terms of section 622.8 or 622.9.

c. Freedom of Expression

The agencies do not presume to impinge upon any of their employee's right of expression, but the individual as an employee is obliged to protect or to refrain from unauthorized dissemination of certain types of information which the employee acquires through official duties, such as classified information, privileged financial, commercial, and other business information, and information about individuals protected by 5 U.S.C. 552a (the Privacy Act of 1974). An employee may be held accountable for deliberate and unauthorized public expressions whether written or spoken, which, by violating the confidentiality of privileged information, impede the efficiency of the Service. Such efficiency may be impeded because information appearing insignificant from a security point of view is highly sensitive by virtue of the source or manner in which it was acquired; or because creation of a poor reputation for discretion and security consciousness seriously impairs the trust and confidence the Service normally enjoys with foreign governments and individuals with whom it must deal in candor and mutual confidence. The Department's procedures for the expression of dissenting views on official matters are contained in 5 FAM 212.3c, and for the agencies the prerequisites for public speeches or writing for publication are found in uniform State/AID/USIA regulations in section 628.

d. Medical Standards

Suitability considerations may also coincide with medical standards and criteria in certain respects,

such as when the conduct substantially evidences emotional disorder or impaired judgment. Alcohol and durg abuse are ordinarily matters of medical concern, although they may also present suitability or security problems (see paragraphs e and f below). As a general policy, conduct which has such medical aspects will be handled under medical standards, but may also be handled under suitability or security standards if medical handling is not deemed sufficient. However, priority consideration should be given in each case to handling such matters medically rather than in a disciplinary mode.

e. Habitual Use of Intoxicating Beverages to Excess

The moderate use of alcohol is generally accepted in our society and is legal in most jurisdictions. The moderate social usage of alcohol is generally known to have little significant relationship to a person's ability to perform effectively and it has no apparent effect upon the Service's ability to effectively conduct its responsibilities. Alcohol abuse by an individual is considered to be primarily a medical problem and should ordinarily and generally be handled in that fashion. However, it may be a suitability or security problem, as when the individual fails to perform duties effectively or, while under the influence of alcohol, indiscreetly discusses sensitive or privileged information. To the extent that the individual seeks rehabilitation and the medical authorities regard the prognosis as favorable, the agencies will handle such problems under the medical program. Should the individual fail to respond to a medical rehabilitation program, as determined by the Office of Medical Services (M/MED), consideration may be given to the appropriateness of a disability retirement with the understanding that alcoholism as a primary diagnosis is not a cause for the finding of a disability, or the case may be handled as a disciplinary or separation matter. Security precautions for the alcoholic individual may include denying access to sensitive information, pending rehabilitation. Alcohol abuse on the part of an applicant, in the absence of evidence of rehabilitation, will result in denial of appointment. For further details of the agencies' policy on alcohol abuse, see uniform State/AID/USIA regulations in section 695.

f. Abuse of Narcotics, Drugs, or Other Controlled Substances

Unlike the moderate use of alcohol, drug abuse is not generally an accepted form of behavior in our society and in most jurisdictions is illegal. For this reason, employment may be denied or terminated for those who illegally use drugs, narcotics, or other controlled substances, including marihuana, LSD, or others that are common and readily obtainable. The agencies are aware that the application of criminal law to the possession of marihuana is in a state of flux, and consideration, therefore, will be given to the actual status of the law in determining whether any action is warranted.

An employee who becomes involved with drugs should seek medical help. As with alcoholism, the abuse of drugs is considered primarily a medical problem and is handled as such. As with alcohol abuse, security precautions for the drug-abusing employee may include denying access to sensitive information, pending successful rehabilitation. Should the employee decline or fail to abide by a medical rehabilitation program, the case may be handled as a disciplinary or separation action. For applicants, indications of drug abuse, without evidence of cessation or rehabilitation, will be grounds for denial of appointment.

In the case of abuse of drugs, the evidence of rehabilitation must be evaluated by the Department's Medical Director. Trafficking in or abuse of narcotics, drugs, or any substance listed under the Controlled Substance Act (section 812, Title 21, U.S.C.), whether or not for profit, is forbidden and will subject the employee to disciplinary action or separation. For further details on the agencies' policy on drug abuse, see section 695.

g. Loyalty and Security

The loyalty and security standards and criteria are contained in section 160 for State; in Handbook 6, chapter 1, for AID, and MOA VIII 200 for USIA. Security criteria, particularly as they relate to the individual's integrity, reliability, or trustworthiness, often coincide with the more general suitability criteria. To the extent that they do, the Department will normally choose to resolve cases under suitability criteria and procedures rather than under security regulations. However, this policy does not preclude action under 3 FAM 160 when deemed appropriate. Indeed, employees will at all times remain subject to continuing evaluation by supervisory and security personnel to ensure that continued security clearance eligibility is clearly consistent with the interests of national security.

h. Criminal Conduct

Conduct which violates criminal laws, whether in the U.S. or abroad, will subject the employee to possible disciplinary action or separation. It is the conduct itself and not an arrest or legal judgment of guilt, if any, which may warrant such action. The fact that Foreign Service employees serving abroad may enjoy certain privileges and immunities--no matter how these may vary by category or from country to country--the Service imposes an added obligation that each employee scrupulously refrain from activities which, but for diplomatic privilege or courtesy, would subject the employee to local criminal sanctions.

i. Financial Responsibility

Standards and guidelines concerning financial obligations and conflicts of interest for the agencies are provided in uniform State/AID/USIA regulations, section 620. Employees are expected to deal responsibly with creditors. In the event of a dispute between an employee and alleged creditor, this section does not require the agency to determine the validity or amount of the disputed debt. Under existing law, an agency may be required in cases of alimony or child support to garnishee the salary of an employee or to take disciplinary action for irresponsible behavior. Disciplinary action may be warranted where an employee's failure to pay financial obligations will result in embarrassment and/or discredit to the agency or Government.

j. The Employee's Obligation to Account for Conduct or Other Matters Directly Affecting Employment

An employee is obliged to account for own conduct, whether on or off the job, related to the employee's responsibilities and performance of duties, and to answer any questions asked by authorized officials relating to such conduct. If authorized officials believe that answers would implicate the employee in a criminal matter, the employee will be advised of right to remain silent, and of the right of legal counsel. Whether or not the employee agrees to account for own conduct, any matter involving possible criminal conduct by an employee will be referred to the Department of Justice. If the Department of Justice declines prosecution in favor of administrative action by the agency, the employee may be reinterviewed concerning own conduct. The employee will be advised that nothing stated in the interview may be used against the employee in any subsequent criminal proceeding. If an employee at this time refuses to account for conduct affecting own responsibilities or performance of duty, the refusal itself may be considered a basis for disciplinary action or separation.

k. The Individual's Obligation to Furnish Information on Fitness

The individual is obliged to provide or authorize others to provide information relevant to a determination of general suitability or security qualifications. Refusal, upon notice of the purpose of the inquiry, may warrant denial of appointment or action leading to disciplinary action or separation upon showing that the inquiry has been authorized.

l. Employee Representative

The employee will be advised of the right to a representative of own choosing at every stage, including initial questioning. The employee and representative(s) who are under the control, supervision, or responsibility of the foreign affairs agencies shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the employee's case. The employee has a right to have own representative present at any meeting when the employee is asked by authorized officials to provide information regarding the employee's own conduct, or information relevant to a question of the employee's suitability or security qualifications, or any other information pertaining to another person which the employee reasonably believes may result in disciplinary action against self. Any representative must have an appropriate security clearance in order to have access to or use of classified information.

m. Allegations or Complaints About Employees

Supervisors or rating officers or other employees with firsthand knowledge, learning of any conduct covered by the provisions of section 622 or other applicable regulations, are obliged to bring the matter to the attention of appropriate agency officials. The principal officer of the employee's parent agency at a post abroad, the Director General of the Department, the Director of Personnel Management (PM) in AID, or the Director of the Office of Personnel Services in USIA may request or conduct any additional investigation deemed appropriate to clarify, confirm, or refute a complaint or allegation. Information deemed sufficiently accurate, complete, and serious enough to warrant further consideration will be referred to the appropriate authority for action.

n. Notoriously Disgraceful Conduct

Notoriously disgraceful conduct is that conduct which is shameful in nature and is generally known and talked of in a scornful manner. It is important to recognize that, in most instances, the presence of notoriety and public censure would be the prime consideration in making an adverse finding rather than the shameful conduct itself. If the conduct, although shameful in nature, is not generally known and has not been talked of, an adverse finding would not be appropriate unless the conduct is disqualifying under one of the other specific factors listed in subchapter S3-2a(3)(b), FPM Supplement 731-1. Evaluators must be careful to avoid letting personal disapproval of such conduct influence their decisions. Disqualification in such cases is warranted only when the notoriety accompanying the conduct can be reasonably expected to affect adversely the person's ability to perform own job or the agency's ability to carry out its responsibilities.

End Uniform State/AID/USIA Regulations.

CHAPTER 6

DISCIPLINARY AND ADVERSE ACTIONS BASED ON MISCONDUCT - CIVIL SERVICE

6A. Purpose

This chapter provides the policies and procedures regarding disciplinary or adverse actions that may be taken as a result of misconduct. Performance-based actions usually are taken under procedures provided in HB 25, Ch. 15, but may be taken under the procedures in this chapter, if appropriate. When both misconduct and performance problems occur, procedures in this chapter must be used.

6B. Applicability

This chapter applies to employees in the competitive service who are not serving a probationary or trial period under an initial appointment; employees who have completed one year of current continuous employment under other than a temporary appointment; preference eligibles in the excepted service, Schedules A and B; Schedule B employees who have competitive status; and Senior Executive Service career employees (adverse actions only).

This chapter does not apply to other Schedule A and B employees, Foreign Service employees, employees whose appointments are made by and with the consent of the Senate, and Administratively Determined employees (see HB 30, Ch. 5, for FS employees; HB 30, Ch. 11 and 12, for all others).

For employees within the bargaining unit, the provisions of the negotiated agreement (HB 24, Ch. 4) take precedence over conflicting procedures in this chapter.

6C. Authorities and References

1. Civil Service Reform Act of 1978, as amended
2. 5 CFR 752, Adverse Actions
3. FPM 752, Adverse Actions
4. HB 24, Ch. 2, Employee Responsibilities, Conduct and Political Activity
5. HB 24, Ch. 4, Labor-Management Relations

6D. Definitions

1. Admonishment. An informal action that consists of an oral warning, advising an employee that his/her conduct or his/her failure to observe a law, regulation or administrative instruction, does not meet Agency standards of behavior. Also referred to as an oral reprimand.

2. Adverse Action. An action against an employee in the form of suspension in excess of 14 days, removal for cause, reduction in grade or pay, or furlough for 30 days or less.

3. Days. Calendar days, unless otherwise specified.

4. Disciplinary Action. An action against an employee in the form of admonishment, reprimand or suspension of 14 days or less.

5. Deciding Official - Disciplinary Actions.

a. For disciplinary actions other than suspension, the deciding official may be the same as the proposing official unless a higher level official is specifically designated.

b. For suspension of 14 days or less, the deciding official is the next higher level supervisor or manager, unless the proposing official reports to the Office of the Administrator, in which case the Assistant to the Administrator for Personnel and Financial Management (AA/PFM) shall be the deciding official.

6. Deciding Official - Adverse Actions.

a. The Assistant Administrator or Deputy of the bureau/office concerned or

b. The Assistant to the Administrator for Personnel and Financial Management (AA/PFM) when the proposing official reports to the Office of the Administrator.

7. Proposing Official - Disciplinary Actions.

a. Any supervisor or manager may propose disciplinary action as a result of personal knowledge, receipt of an investigative report or other documentation concerning an act or behavior by an employee which may be grounds for such action.

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b. A supervisor or manager serving as chief of a division, or an equivalent staff position reporting to an office director, or a higher level official, may propose a suspension of 14 days or less for reasons described in this chapter.

c. The administrative or executive management officer may propose such action when the supervisor or manager who would usually propose the action is unavailable due to reassignment, TDY, leave or similar reason, or when action is proposed based on an investigative report, civil or criminal proceedings or other circumstance where the events occurred away from the employee's normal duty station.

8. Proposing Official - Adverse Actions. An office director or higher management official may propose an adverse action as a result of personal knowledge or receipt of an investigative report or other documentation concerning an act or behavior by an employee which may be grounds for such action.

9. Reprimand. An official written rebuke, censure or disapproval of a specific action or actions by an employee.

10. Removal. Involuntary separation of an employee from the Agency for such cause as will promote the efficiency of the federal service.

11. Suspension. An Agency action which places an employee in a temporary leave without pay (LWOP) status for disciplinary reasons. An employee on LWOP at his/her request, is **not** a disciplinary action.

6E. Actions Not Covered by this Chapter

1. Suspension or removal for security reasons under 5 U.S.C 7532;

2. reduction in force under 5 U.S.C. 3502;

3. reduction in grade or removal of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2), if such reduction is to the grade held immediately before becoming a supervisor or manager;

4. a reduction in grade or removal under 5 U.S.C. 4303, for unacceptable performance under the Agency's appraisal system;

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5. reduction in grade or removal of employee who has not completed one year of current continuous employment in the same or similar positions;

6. actions initiated under 5 U.S.C. 1206 and 7521 pertaining to the Special Counsel or Administrative Law Judges;

7. actions taken by the U.S. Office of Personnel Management, e.g., separation ordered because of an employee's disqualification for federal service, military separation, optional and discontinued service retirement, and voluntary actions including abandonment of position;

8. separations and reductions in grade or pay voluntarily initiated by employees.

6F. Policies

1. It is the policy of the Agency to expect its employees to maintain high standards of conduct. Every effort should be made to counsel employees, identify Agency standards of conduct and give constructive feedback regarding employee conduct to forestall the development of situations in which there is no alternative to disciplinary/adverse actions. Supervisors are responsible for identifying conduct of subordinates who fail to meet standards of conduct, informing employees of their failure to meet the standards, and initiating corrective action, promptly, impartially, and contructively.

2. It is the policy of the Agency to effect timely disciplinary action consistent with the nature of the offense. Supervisors are encouraged to apply the minimum corrective action believed necessary to bring about the desired change in conduct. Repeated infractions indicate that the previous disciplinary action was insufficient to effect the desired change and more severe corrective actions shall normally be proposed in such cases. (refer to the example stated in 6H of this chapter) In the case of repeated infractions, only offenses occurring within the preceding two-year period may be considered. Supervisors should recognize that there may also be situations of misconduct so egregious that the first instance of misconduct may warrant removal. Supervisors should contact the personnel specialist who backstops the employees office concerning specific situations prior to proposing written disciplinary actions.

6G. Responsibilities

1. Supervisors

a. Inform subordinates of the standards of conduct they are expected to observe, and identify conduct of subordinates who fail to meet standards;

b. provide an atmosphere conducive to good working relationships;

c. take preventive measures, e.g. counsel subordinates, to avoid situations that might result in a need for disciplinary action;

d. keep systematic records of any events, dates, discussions with employees, letters, etc., concerning a matter with potential for developing into a disciplinary problem;

e. initiate corrective action to correct a breach of conduct after informing the employee of the facts and judiciously analyzing them;

f. consult with appropriate staffing specialist to make certain that proposed disciplinary actions are consistent with federal statute and regulations, and Agency policies and procedures, and prior to proposing written disciplinary actions;

g. initiate disciplinary or adverse actions based on investigative reports of misconduct.

* 2. Labor and Employee Relations Division (FA/HRDM/LER) *

Provides, on request, general advice and assistance on disciplinary matters to supervisors, operating officials, employees and bureau/office administrative offices and executive management staffs (EMS).

3. Employees

Familiarize themselves with the Agency's ethics program (HB 24, Chapter 2).

6H. Procedures

Supervisors should apply the minimum corrective action they believe is necessary to bring about the desired change in conduct. Repeated infractions (only offenses occurring within the preceding two-year period may be considered) indicate that previous disciplinary action was insufficient to effect the desired change, and that more severe corrective actions usually

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will be proposed in such cases. Example: the first instance of tardiness or abuse of flexitime may warrant an oral warning; however, if such misconduct is repeated, more severe action such as a letter of reprimand or suspension would be appropriate.

Supervisors should recognize that there also may be situations of misconduct so egregious that the first instance of misconduct may warrant removal.

1. Disciplinary Actions

a. Oral Admonishment

The purpose of an oral admonishment is to increase the employee's efficiency and effectiveness by encouraging/advising the employee to change his/her conduct, attitude, habits or work methods. Where there is need to admonish an employee, the supervisor:

(1) gathers the facts;

(2) counsels the employee in private;

(3) clearly states the reasons for the admonishment;

(4) considers any explanation the employee may offer and, if it is acceptable, withdraws the complaint;

(5) if the explanation is not acceptable, points out the reason why and offers specific suggestions as to how the employee may improve or correct the condition;

(6) if appropriate, warns the employee that succeeding offenses may result in more severe disciplinary action;

(7) prepares a memorandum for the record which reflects, in substance, the interview and advises the employee it is to be made a matter of record within the immediate office, but that it will not be placed in the Official Personnel Folder (OPF) unless further disciplinary steps become necessary. Gives a copy to the employee.

b. Reprimand or Suspension of 14 Days or Less

(1) Letter proposing reprimand or suspension

(a) The letter must:

6H1

b. Reprimand or Suspension of 14 Days or Less

(1) Letter proposing reprimand or suspension

(a) The letter must:

--state specific reasons for issuing the proposed letter, including times, places, names and circumstances;

--identify any relevant misconduct and corrective actions previously taken during the past two years;

--explain that the letter of reprimand is proposed for inclusion in the employee's OPF for a period not to exceed two years.

(b) The letter must also state that the employee:

--may respond to the deciding officer within seven work days; however, consideration will be given to extending the response period if the employee submits a request in writing to the deciding official prior to the expiration of the time to answer, stating the reason(s) for requesting more time;

--has the right to reasonable official time (for adverse actions, three to five work days; disciplinary actions, one to two work days) to prepare his/her reply. PFM/PM/CSP should be consulted when the issues are especially difficult or complex, the material voluminous, or there are other extenuating circumstances which may warrant consideration for a longer period of official time.

--may examine material used as a basis for the action. Some material, e.g., medical records and investigative reports by the Office of the Inspector General, must be obtained through the Privacy Act from the Office of Public Inquiries (EX/PI). To the extent practicable, copies of all such material should be included in the proposed notice.

--has the right to discuss the case with Agency individuals and/or offices;

--may submit affidavits or other material to support his/her defense of the action;

--has the right to be represented by an attorney or other representative, the cost of such being borne by the employee;

6H1b(1)b

--will receive a written decision from the deciding official at the earliest practicable date.

(2) Decision letter

The decision letter must include:

(a) the reasons for the decision, including which of the charges are sustained and which are not;

(b) the effective date of disciplinary action, which must not be less than 30 calendar days following the date that the employee received the notice of the proposed disciplinary action.

(c) a warning, if appropriate, that succeeding offenses may result in more severe action;

(d) a statement that the employee has a right to grieve the decision (see HB 29, Ch. 3.). Employees within the bargaining unit must use the procedures provided in the negotiated agreement (HB 24, Ch. 4).

2. Adverse Actions

An adverse action is taken for such cause as will promote the efficiency of the federal service. Causes for adverse actions include, but are not limited to, inefficiency, misconduct on and off the job, absenteeism, misuse of government property, insubordination, physical or mental inability to perform the duties of the position, or a furlough of 30 days or less to protect a position.

a. Proposal

(1) The proposing official usually must give the employee 30 calendar days notice of the proposed adverse action. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment may be imposed, the Agency may give the employee less than 30 calendar days advance notice but not less than seven calendar days advance notice. Aside from the waiver of the advance notice requirement and the right to answer, the employee is entitled to the other requirements of this regulation including the right to appeal.

(2) The notice must include the specific charges and reasons why the action is being proposed and the following statements:

6H2a(2)

(a) that the employee has the right to be represented by an attorney or other representative, with the cost of representation borne by the employee;

(b) that the employee may have reasonable administrative time to prepare his/her defense as determined by the proposing officer;

(c) that the employee has the right to examine all material used as the basis for the proposed action. Some material, e.g., medical records and investigative reports by the Office of the Inspector General, must be obtained through the Privacy Act from the Office of Public Inquiries (EX/PI). To the extent practicable, copies of all such materials should be included in the proposed notice.

(d) that the employee has the right to answer the charges orally and/or in writing within 10 work days to the deciding official specified in the notice;

(d) that consideration will be given to extending the response period if the employee submits a request in writing to the deciding official prior to the expiration of the time to answer, stating the reason(s) for requesting more time.

b. Decision

The deciding official will consider any defense of the employee and all facts and circumstances, and will issue a written decision to the employee at the earliest practicable date after he/she answers the charges, or after the expiration of the period of time provided for his/her reply. The written decision should explain:

(1) the decision, i.e., whether the action to be taken is the same as proposed, a less severe action than proposed and, if so, the specific action to be taken, or no action;

(2) which charges were sustained and which were not;

(3) the effective date of the adverse action, which must be not less than 30 calendar days following the date the employee received the notice of proposed adverse action;

6H2b

(4) the employee's right of appeal to the appropriate office of the Merit Systems Protection Board (MSPB).

(5) The time limit for submitting an appeal, as provided by MSPB regulations, is no later than 20 days after the adverse action has been effected.

c. Appeal

Employees within the bargaining unit may elect to appeal to the MSPB or to file a grievance under the negotiated agreement, but not both. If the decision is to impose a lesser penalty, i.e., suspension of 14 days or less, the employee is not entitled to appeal to the MSPB but may file a grievance. Employees in positions outside the bargaining unit must use the procedures provided in HB 29, Ch. 3.

d. Status of Employee Pending Adverse Action Decision

(1) If at all practicable, the employee must be kept on active duty in his/her regular position, or temporarily assigned duties elsewhere in AID/W, as appropriate, during the notice period.

(2) If the Agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to him/herself or others, result in loss of or damage to U.S. Government property, or otherwise jeopardize legitimate U.S. Government interests, the Agency may elect one or a combination of the following:

(a) assign the employee to duties where he/she is no longer a threat to safety, the Agency mission or to U.S. Government property;

(b) allow the employee to take leave, or carry him/her in an appropriate leave status, e.g., annual leave, sick leave (supported by medical documentation), leave without pay or absence without leave, if he/she has absented him/herself from the worksite without requesting leave;

(c) curtail the 30-day advance notice period, including in the absence of judicial action if the Agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed;

6H2d

(d) place the employee in a paid, nonduty status for such time as is necessary to effect the action.

6I. Factors to Consider in Selecting Penalties (The Douglas Factors)

1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional, technical or inadvertent, committed maliciously or for gain, or frequently repeated;

2. the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and the prominence of the position;

3. the employee's past disciplinary record;

4. the employee's past work record, including length of service, performance on the job, ability to get along with fellow employees, and dependability;

5. the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;

6. consistency of the penalty with those imposed upon other employees for the same or similar offenses;

7. consistency of the penalty with the Agency's table of penalties;

8. the notoriety of the offense or its impact upon the reputation of the Agency;

9. the extent to which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

10. potential for the employee's rehabilitation;

11. mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, or harassment, bad faith, malice or provocation on the part of others involved in the matter; and

12. the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

6J. Forms and Attachments

Att. 6A: Offenses for Which Maximum Penalties have Fixed by Law
Att. 6B: Examples of Misconduct and Suggestion Disciplinary Actions
Att. 6C: OF 283, United States Merit Systems Protection Board Appeal
Att. 6D: Authority to Propose or Decide Disciplinary or Adverse Actions

ATTACHMENT 6A

Offenses for which Maximum Penalties are Fixed by Law

Nature of Offense	Law	Maximum Penalty
Government documents or records - Concealing removing, mutilating, obliterating, or destroying records or documents. Attempting to conceal, remove, mutilate, obliterate, or destroy records or documents, taking or carrying away records or documents, with intent to conceal, remove, mutilate, obliterate, destroy, or steal them.	Secs. 128, 129, Criminal Code; 18 U.S.C. 2071; P.L. 772	$2,000 fine; 3-year imprisonment; or both If the guilty person was in charge of the records or documents, and actually concealed, removed, mutilated, obliterated, or destroyed them, $2,000 fine, 3-year imprisonment, or both, plus removal and disqualification for federal office.
Taking and carrying away, without authority, from place where filed or kept, any document or file intended to be used or presented to procure payment of money from or by the United States; presenting, using, or attempting to use any such document or paper, in order to procure the payment of any money from or by the United States.	Sec. 40, Criminal Code; 18 U.S.C. 285; P.L. 772	$5,000 fine; 5-year imprisonment; or both
Government transportation requests. - Falsely making, counterfeiting, forging, in whole or in part, any form of transportation request. Knowingly altering any such request. Knowingly passing, publishing, selling, or attempting to pass, publish, or sell any such false, forged, counterfeited, or altered form of request.	18 U.S.C. 508; P.L. 772,	$5,000 fine; 10-year imprisonment; or both
U.S. Government vehicles.- Using or authorizing the use of Government vehicles or aircraft for other than official purposes.	Sec. 16, P.L. 600, 79 th Congress; 60 Stat 810; 5 U.S.C. 78 (c); 31 USC 1349(b).	Suspension without compensation for not less than one month; suspension for a longer period or removal if the circumstances warrant.

Nature of Offense	Law	Maximum Penalty
Official envelopes. - Using official envelope, label or endorsement authorized by law, to avoid payment of postage or registry fee on private letter, package, or other matter in the mail.	Sec. 227, Criminal Code; 18 U.S.C. 1719; P.L. 772, 80th Cong., approved June 25, 1948.	$300 fine.
Strikes. - Participating in any strike against the Government of the United States, or asserting the right to strike against the Government; or holding membership in an organization of Government employees that asserts the right to strike against the Government of the United States, knowing that such organization asserts such right.	Sec. 1, P.L. 330, 84th Cong., approved Aug. 9, 1955; 69 Stat. 629.	$1,000 fine; 1-year and a day imprisonment; or both.
Drunkenness. - Habitually using intoxicants to excess.	Sec. 8, Civil Service Act of Jan. 16, 1883; 22 Stat. 406; 5 U.S.C.	Removal.
Examination. - Improper activity with respect to ratings. - Willfully, corruptly, and falsely marking, grading, estimating, or reporting upon the examination or proper standing of any person examined under the Civil Service Act, or aiding in so doing. Willfully and corruptly making any false representations concerning the examination or proper standing of any person examined under the Civil Service Act, or concerning the person examined.	Sec. 5, Civil Service Act of Jan. 16, 1883; 22 Stat. 405; 5 U.S.C. 637.	$1,000 fine; 1-year imprisonment; or both
Examination. - Improperly furnishing information. - Willfully and corruptly furnishing to any person any special or secret information for the purpose of either improving or injuring the prospects or chances for appointment, employment, or promotion, of any person examined or to be examined under the Civil Service Act.	Sec. 5, Civil Service Act of Jan. 16, 1883; 22 Stat. 405; 5 U.S.C. 637.	$1,000 fine; 1-year imprisonment; or both
Gifts to official superiors. - Soliciting contributions from other Government officers or employees for a gift or present to those in a superior official position. Accepting gifts or presents offered or presented as a contribution from persons in Government employ receiving a lower salary. Making donation as a gift or present to official superior.	Sec. 1784, Revised Statutes; 5 U.S.C. 113.	Removal.

Nature of Offense	Law	Maximum Penalty
Compensation in matters affecting the Government. (a) Directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another at a time when he is an officer or employee of the Government in relation to any proceeding, application request for a ruling or other determination, contract, claim controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission; (b) Knowingly, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised or offered is or was an officer or employee	Sec. 203, P.L. 87-849, 87th Cong., approved Oct. 23, 1962	$10,000 fine; 2-year imprisonment; or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.
Activities of officers and employees in claims against and other matters affecting the Government. Whoever being an officer or employee of the United States (a) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or (b) acts as agent or attorney for anyone before any department, agency, court, court-martial officer, or any civil, military, or naval commission in connection with any proceeding application, request for a ruling or other determination, contract, claim, controversy charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest.	Sec. 205, P.L. 87-849, 87th Cong., approved Oct. 23, 1962.	$10,000 fine; 2-year imprisonment; or both.

Nature of Offense	Law	Maximum Penalty
Acts affecting personal financial interest. Whoever being an officer or employee of the executive branch participates personally and substantially as a Government officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.	Sec. 208, P.L. 87-849, 87th Cong., approved Oct. 23, 1962.	$10,000 fine; 2-year imprisonment; or both.
Salary of Government officials and employees payable only by United States. (a) whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government from any source other than the Government of the United States except as may be contributed out of the treasury, state, country or municipality; or (b) Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make receipt a violation of (a) above.	Sec. 209, P.L. 87-849, 87th Cong., approved Oct. 23, 1962.	$5,000 fine; 1-year imprisonment; or both
Riots and civil disorders (a) An individual convicted by any federal, state, or local court of competent jurisdiction of- (1) inciting a riot or civil disorder; (2) organizing, promoting, encouraging, or participating in a riot or civil disorder; (3) aiding or abetting any person in committing any offense specified in clause (1) or (2); or (4) any offense determined by the head of the employing agency to have been committed in furtherance of, or while participating in, a riot or civil disorder;	Section 7313, P.L. 90-351, 90th Cong., approved June 19, 1968, 5 U.S.C. 7313	Removal

Nature of Offense	Law	Maximum Penalty
shall, if the offense for which he is convicted is a felony, be ineligible to accept or hold any position in the Government of the United States, or in the government of the District of Columbia for the five years immediately following the date upon which his conviction becomes final. Any such individual holding a position in the Government of the United States or the government of the District of Columbia on the date his conviction becomes final shall be removed from such position. (b) For the purposes of this section, "felony" means any offense for which imprisonment is authorized for a term exceeding one year.		

ATTACHMENT 6B

Examples of Misconduct and Suggested Disciplinary Actions

Offense	Explanation	Disciplinary Action: First Offense	Second Offense	Third Offense
1. Absence without leave.	Unauthorized absence, including repeated tardiness, leaving the job without permission. (Removal may be appropriate for a first offense if the absence is prolonged or excessive.)	Reprimand to suspension	Suspension to removal	Removal
2. Damage to, loss of, unauthorized use or willful destruction of government property or records.	Includes loss or damage of small value or intent was involved.	Reprimand to suspension	Suspension to removal	Removal
	Willfulness, intent, or unauthorized use is involved or when loss or damage is significant.	Suspension to removal	Removal	
3. Insubordination	Deliberate delay or failure to carry out assigned work or instructions within a reasonable time. Refusal to obey legitimate orders, disrespect, insolence and like behavior.	Reprimand to removal	Suspension to	Removal
4. Disorderly conduct on/off duty.	Rude, boisterous play which adversely affects production, discipline, or morale; use of disrespectful, abusive or offensive language; quarreling or inciting to quarrel.	Reprimand to removal	Suspension to removal	Removal

Offense	Explanation	Disciplinary Action: First Offense	Second Offense	Third Offense
	Fighting, threatening or inflicting bodily harm; physical resistance to competent authority; drunkenness; violent acts or language which adversely affect morale, production or maintenance of discipline; derogatory remarks concerning foreign nationals; indecent or immoral conduct.			
5. Use of intoxicants				
a. Minor	Drinking intoxicants on duty	Official reprimand	Official reprimand to removal	Removal
b. Major	Reporting for duty or being on duty under the influence of intoxicants so as to be unable to perform duties or to be a hazard to self or others.	Official reprimand to removal	Removal	
6. Misconduct off duty				
a. Minor	Overt action constituting minor breaches of legal or social codes of a country to which assigned. Example: use of loud, abusive language in public.	Admonition to official reprimand	Official reprimand	
b. Major	Misconduct which adversely affects the reputation of the employee or reflects unfavorably on the United States Government; includes conviction for felonies, arrest or indictment for felonies and arrest, indictment or conviction for misdemeanors.	Official reprimand to removal	Removal	

Offense	Explanation	Disciplinary Action: First Offense	Second Offense	Third Offense
7. Failure to honor valid debts or legal obligations.	Failure without good reason to honor debts acknowledged by the employee to be valid or the validity of which is supported by a court judgment, such as family, custody payments. Consideration will be given to extenuating circumstances.	Admonition to official reprimand	Official reprimand	Removal
8. Discrimination	Any action or failure to take action based on sex, race, color, religion national origin or handicapped condition of an employee or applicant which affects his rights, privileges, benefits, dignity or equality of economic opportunity. In determining whether offense is major or minor, consider circumstances, effect on employee, use of abusive language, violent treatment, insulting demeanor and whether the discriminatory practice was deliberate or inadvertent.	Admonition to official reprimand	Official reprimand	Official reprimand to removal
9. Acceptance of gifts or gratuities	Violation of regulations or exercise of poor judgment regarding acceptance od gifts or gratuities in a manner which could reflect discredit upon the employee or the Agency.	Admonition to removal	Admonition to removal	Admonition removal
10. Violation of other administrative rules or regulations not specified herein.	Engaging in prohibited activities and transactions. This may include violations of regulations on trade or barter, writing for publication, or any other act specifically prohibited.	Admonition to removal	Official reprimand to removal	Official reprimand to removal
11. Sexual Harassment	Any action which results in unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature of an employee or applicant.	Offical reprimand to removal	Suspension to Removal	Removal

ATTACHMENT 6C

UNITED STATES MERIT SYSTEMS PROTECTION BOARD **APPEAL**	AGENCY USE ONLY

INSTRUCTIONS:

THE PURPOSE OF THIS FORM IS TO HELP YOU PROVIDE IMPORTANT INFORMATION TO THE U.S. MERIT SYSTEMS PROTECTION BOARD ("THE BOARD") WHEN YOU FILE AN APPEAL. YOU ARE NOT REQUIRED TO USE THIS FORM, AND YOU ARE NOT LIMITED TO ANSWERING THE QUESTIONS ON THE FORM IF YOU FEEL THERE IS OTHER INFORMATION YOU WISH TO PROVIDE. HOWEVER, IF YOU DO NOT USE THE FORM, YOUR APPEAL DOCUMENTS MUST COMPLY WITH THE BOARD'S REGULATIONS. YOUR AGENCY'S PERSONNEL OFFICE WILL PROVIDE YOU WITH A COPY OF THESE REGULATIONS AND THE BOARD ADVISES YOU TO REVIEW THEM.

ALL APPEALS FILED BEFORE AGENCY ACTION HAS BEEN TAKEN WILL BE CONSIDERED PREMATURE AND WILL BE RETURNED WITHOUT ACTION.

ALL APPELLANTS WHO ELECT TO USE THIS FORM SHOULD COMPLETE PARTS I THROUGH IV. ONLY THOSE WHO ARE APPEALING REDUCTION-IN-FORCE (RIF) ACTIONS ARE REQUIRED TO COMPLETE PART V. THE INFORMATION MUST BE TYPED OR PRINTED CLEARLY. ANSWER ALL QUESTIONS AND USE "N/A" WHEN THE QUESTION IS NOT APPLICABLE TO YOUR APPEAL. ALL APPELLANTS MUST SIGN AND DATE THE FORM IN THE SPACE PROVIDED AT THE END OF PAGE 4 FOR IT TO BE ACCEPTED BY THE BOARD, AND TO INDICATE APPROVAL OF THE CONTENTS OF THE ENTIRE FORM.

YOU MAY SUPPLEMENT YOUR RESPONSE TO ANY QUESTION IN THE SPACE PROVIDED ON PAGE 4 OR, IF NEEDED, ON SEPARATE SHEETS OF PAPER. IF SEPARATE SHEETS ARE USED, PLEASE PUT YOUR NAME AND SOCIAL SECURITY NUMBER AT THE TOP OF EACH PAGE. INDICATE BY NUMBER WHICH QUESTION YOU ARE ANSWERING, AND ATTACH THE EXTRA PAGES TO THE FORM.

WHERE TO FILE—YOU OR YOUR REPRESENTATIVE ARE REQUIRED TO FILE ONE ORIGINAL AND ONE COPY OF THIS FORM, TOGETHER WITH ITS ATTACHMENTS, WITH THE BOARD'S REGIONAL OFFICE IDENTIFIED IN THE DECISION NOTICE PROVIDED BY THE AGENCY. FILING MUST BE MADE EITHER BY PERSONAL DELIVERY DURING NORMAL BUSINESS HOURS TO THE APPROPRIATE BOARD REGIONAL OFFICE OR BY MAIL ADDRESSED TO THAT OFFICE. THE BOARD RECOMMENDS BUT DOES NOT REQUIRE THAT YOU USE CERTIFIED MAIL.

PRIVACY ACT STATEMENT

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

PART I. APPELLANT IDENTIFICATION

1. NAME *(Last, first, middle)*	2. SOCIAL SECURITY NUMBER
3. PRESENT ADDRESS *(Number and street, city, state, and ZIP code)* YOU ARE REQUIRED TO NOTIFY THE BOARD OF ANY ADDRESS CHANGE IN ORDER TO INSURE THE CORRECT DELIVERY OF A DECISION.	4. HOME PHONE *(Include area code)* 5. OFFICE PHONE *(Include area code)*

PART II. APPEALED ACTION

6. BRIEFLY DESCRIBE THE *AGENCY ACTION* YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS *(e.g., a Notice of Proposed Action, a Form 50, or Agency Appeal Decision)*

7. NAME AND ADDRESS OF ACTING AGENCY *(Including Bureau, or other Division as well as street address, city, state, and ZIP code)*	8. APPELLANT'S POSITION TITLE AT TIME OF ACTION	
	9. GRADE AT TIME OF ACTION	10. SALARY AT TIME OF ACTION $ PER

11. ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN? ☐ YES ☐ NO	12. EMPLOYMENT STATUS ☐ Temporary ☐ Applicant ☐ Retired ☐ Permanent ☐ Term		13. IF RETIRED, DATE OF RETIREMENT *(Month, day, year)*
14. TYPE OF SERVICE ☐ Competitive ☐ Excepted	15. LENGTH OF GOVERNMENT SERVICE	16. LENGTH OF SERVICE WITH ACTING AGENCY	17. WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT THE TIME ACTION WAS TAKEN BY THE AGENCY? ☐ YES ☐ NO
18. DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED *(Month, day, year) (Attach copy)*	19. DATE FINAL DECISION NOTICE RECEIVED *(Month, day, year) (Attach Copy)*		20. EFFECTIVE DATE OF ACTION *(Month, day, year)*

21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? *(Explain briefly)*

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

23. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST.

24 HAVE YOU FILED A FORMAL DISCRIMINATION COMPLAINT CONCERNING THE MATTER WHICH YOU ARE SEEKING TO APPEAL WITH YOUR AGENCY OR ANY OTHER AGENCY? ☐ YES *(Attach copy)* ☐ NO		
24A IF YES, DATE FILED *(Month, day, year)*	24B PLACE FILED *(Agency and location)*	24C. HAS THERE BEEN A DECISION? ☐ YES *(Attach copy)* ☐ NO

25. HAVE YOU, OR ANYONE IN YOUR BEHALF, FILED A FORMAL GRIEVANCE WITH YOUR AGENCY CONCERNING THIS MATTTER, UNDER A NEGOTIATED GRIEVANCE PROCEDURE PROVIDED BY A COLLECTIVE BARGAINING AGREEMENT?

☐ YES *(Attach copy)* ☐ NO

25A. IF YES, DATE FILED *(Month, day, year)*	25B. PLACE FILED *(Agency and location)*	25C. HAS DECISION BEEN ISSUED? ☐ YES *(Attach copy)* ☐ NO
25D. IF YES, DATE FILED *(Month, day, year)*	25E. NAME OF ISSUING OFFICIAL	25F. TITLE OF ISSUING OFFICIAL

PART III. HEARING

26. YOU HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENTS YOU AND THE AGENCY SUBMIT. IF NO SQUARE IS CHECKED, THE BOARD WILL PRESUME YOU ARE WAIVING A HEARING. *DO YOU WANT A HEARING?*

☐ YES ☐ NO

IF YOU CHOOSE TO HAVE A HEARING THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

PART IV. DESIGNATION OF REPRESENTATIVE

27. YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL. IF HE/SHE AGREES TO DO SO, THIS PERSON DOES NOT HAVE TO BE AN ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MAY CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A. "I HEREBY DESIGNATE _____ TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF THIS APPEAL. UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

27B. REPRESENTATIVE'S ADDRESS AND PHONE NUMBER	27C. REPRESENTATIVE'S SIGNATURE	27D. DATE
	27E. REPRESENTATIVE'S EMPLOYER	

PART V. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS: FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CAN FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW.

28. RETENTION GROUP OR SUB-GROUP	29. SERVICE COMPUTATION DATE	30. HAS YOUR AGENCY OFFERED YOU ANOTHER POSITION RATHER THAN SEPARATING YOU? ☐ YES ☐ NO
31. TITLE OF POSITION OFFERED	32. GRADE OF POSITION OFFERED	33. SALARY OF POSITION OFFERED $ PER
34. LOCATION OF POSITION OFFERED	35. DID YOU ACCEPT THIS POSITION? ☐ YES ☐ NO	

36. EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE *(Explanations could include: You were placed in the wrong retention group or subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level, an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower retention group or subgroup; or any other reasons. Please provide as much information as possible regarding each reason.)*

37 SUPPLEMENTAL ANSWER SPACE

ATTENTION—THIS APPEAL MUST BE SIGNED

I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief.	SIGNATURE OF APPELLANT	DATE SIGNED

ATTACHMENT 6D

AUTHORITY TO PROPOSE OR DECIDE DISCIPLINARY OR ADVERSE ACTIONS

The lowest authority level is shown; a higher authority level also may propose or decide such action.

	ADVERSE ACTIONS		DISCIPLINARY ACTIONS		
Authority	Separation	Suspension (over 14 days)	Suspension (14 days or less)	Reprimand* Written	Reprimand* Oral
Asst. Admin. (or Deputy)	Y	Y			
Office Director (or Deputy)	X	X	Y		
Division Chief or Staff Supv.			X		
Branch Chief or Sec. Supv.				X Y	X Y

Y = Deciding Official
X = Proposing Official

*May be proposed and decided at any level

CHAPTER 7

APPEALS

7A. Discontinuance of the Agency Appeals System and Establishment of One-Level Appeals System Within the Civil Service Commission

Executive Order 11787, dated June 13, 1974, directed the discontinuance of Agency systems for appeals from adverse actions and the establishment of a unified one-level appeals system within the Civil Service Commission.

Appeals from adverse actions (i.e., removal, suspension for more than 30 days, furlough without pay, and reduction in rank or pay) which took effect on or after September 9, 1974, will be made directly by the employee within 15 calendar days after the adverse action has been effected to the Civil Service Commission rather than to the Agency.

7B. Reinstatement Rights of Employees in AID/W Excepted Service (AD's)

1. Basis for Appeal and Time Limit

An employee may appeal to the Civil Service Commission on the basis of any of the following conditions:

a. The parent agency determines he is ineligible for reinstatement. Appeal must be filed within 15 calendar days after employee receives notice of this determination.

b. The patent agency fails to reinstate him within the time limits specified in HB 25, Ch 12I2b. Appeal must be filed within 15 calendar days after the applicable time limit expires.

c. The employee considers that his reinstatement is not in accordance with the act and the provisions of HB 25, Ch 12. Appeal must be filed within 15 calendar days after his reinstatement becomes effective.

2. Where to File

Initial appeals are filed with the Federal Employee Appeals Authority, U. S. Civil Service Commission, Washington, D.C. 20415.

3. Delayed Appeals

In the discretion of the Commission, an appeal may be accepted after the time limit specified above when the appellant shows that he was not notified of these limits and was not otherwise aware of them,

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or that circumstances beyond his control prevented him from filing an appeal within the prescribed limits.

7C. Performance Evaluation - AID Departmental Service Employees

1. Appeal of PER

If there is a difference of opinion between the employee and his supervisor as to the Performance Evaluation Report, the employee and the supervisor are to make an effort to adjust the matter informally. The reviewer, the administrative or management office having jurisdiction over the employee, and PM/PS/ER are available to assist the employee and the supervisor to reach an understanding. If the difference is not resolved by the time the final rating is delivered to the employee, the employee may appeal his summary adjective performance rating to a review board. Such appeal is filed on CSC Optional Form 6. (See Attachment 7A.) In presenting his appeal, the employee may have a representative of his own choice. See HB 25, Ch 15 for details on Performance Evaluation.

2. Review of a Satisfactory Rating

An employee who is given a summary rating of satisfactory may appeal to the Administrative Performance Rating Board of Review or the Statutory Performance Rating Board of Review, except that employees with AD appointments may appeal only to the Administrative Board. If a satisfactory rating is appealed to the Administrative Board and such board makes a decision thereon, the employee may not appeal to the Statutory Board.

3. Review of an Unsatisfactory Rating

An employee who receives an unsatisfactory rating may appeal directly to the Chairman of the Administrative Board or the Statutory Board (except employees with AD appointments may appeal only to the Administrative Board). Normally, appeals concerning unsatisfactory ratings are presented initially to the Administrative Board, since the decision of the Statutory Board is final. Appeals are to be made within 30 calendar days after receipt of notice of official rating.

4. Hearing Procedures

a. Administrative Performance Rating Board

Normally, the Board rules on a written record; however, informal hearings may be conducted if in the judgment of the Board such hearings are required for fact-finding purposes. Appropriate records and notifications of the Board's decision include a written notice to the employee of the Board's findings. Appeals from the decision of the Administrative Board to the Statutory Board are made within 30 calendar days after receipt of the Board's decision.

7C4

b. Statutory Performance Rating Board

If an employee withdraws his request for review by the Administrative Board, his appeal to the Statutory Board is made within 15 calendar days after the date of withdrawal if more than 30 calendar days have elapsed since he received his notice of rating. The Statutory Board, in its review of appeals submitted to it, follows the procedures with respect to hearings set forth in Chapter 430, Subchapter 4, of the Federal Personnel Manual. Decisions of this Board are final.

7D. Performance Evaluation - Foreign Service Personnel — HB 25, Ch 10

7E. Denial of Step Increase - AID Departmental and Prevailing Rate Employees — HB 26, Ch 3

7F. Denial of Step Increase - Foreign Service Personnel — HB 26, Ch 2

7G. Position Classification Appeals

1. Appeal Rights

Employees occupying GS and WB positions may appeal Agency classification actions. GS employees may choose to file an initial appeal directly with the CSC. WB employees must first exercise Agency appeal rights before appealing to the CSC.

2. Employee Representative

An employee may select a representative of his own choosing to assist him in processing his appeal. The employee and his representative are to be free from restraint, interference, coercion, or reprisal, in the appeal process.

3. Time of Filing

An employee may appeal the classification of his position at any time. However, to become eligible for retroactive benefits in cases where classification action resulted in downgrading or loss of compensation, the employee must file an initial appeal within 15 calendar days after the effective date of the action taken as a result of the classification decision.

4. Information to be Included in the Appeal

The information to be furnished by the employee in his appeal within the Agency is the same as that contained in FPM 511, Appendix A, Section A-3. (See Attachment 7B.)

7G

5. Action on the Appeal

The appeal is reviewed by PM/CSP and the necessary desk audit and supervisory review are made.

a. If the requested classification can be approved, this action is taken and the employee notified. If the requested classification action cannot be approved, a written report on the appeal is forwarded to the Chief, PM/CSP, who makes the final Agency decision on the appeal.

b. If the appeal is denied, the employee is notified in writing of the reasons therefor. The employee is also notified of his additional appeal rights to the CSC.

6. Processing Time Requirements

Normally, appeals under Section A-3 of Att 7B are decided within 30 calendar days of their receipt by PM/CSP. If for any reason the appeal cannot be resolved within this time period, the employee is notified in writing of the reasons for delay and the date the decision is to be made.

If the classification decision on the appeal has not been issued within 60 calendar days of the date filed in the Agency, the employee may ask the Director, SER/PM, to adjudicate the appeal.

7. Cancellation of an Appeal

Appeals are cancelled under the following circumstances:

a. At the employee's written request.

b. When the employee has an appeal pending with CSC.

c. When the employee is terminated or reassigned to another position, except where retroactive benefits may apply.

d. If the employee fails to furnish required information or to cooperate in the adjudication of his appeal.

8. Civil Service Commission

Employees appealing classification action to the CSC follow procedures outlined in FPM 511, Subchapter 6. (See Attachment 7C.)

9. Effective Dates of Position Classification Actions

Effective dates for nonappeal actions as well as those actions which are appealed are set forth in FPM 511, Subchapter 7. (See Attachment 7D.)

7H. Board of Review and Appeals - AID Foreign Service

1. General

a. Section 637(a) of the Foreign Service Act of 1946, as amended, provides for the separation of a Foreign Service employee for unsatisfactory performance or for other cause which will promote the efficiency of the Service. It provides further that:

> "...no such officer or employee shall be so separated until he shall have been granted a hearing by the Board of the Foreign Service and the unsatisfactory performance of his duties, or other cause for separation, shall have been established at such hearing, unless he shall have waived in writing his right to a hearing. The provisions of this section shall not apply to... (any) employee of the Service who is in a probationary status or whose appointment is limited or temporary, except when separation is by reason of misconduct."

b. With respect to AID Foreign Service personnel covered by this section (see 7H3), the functions of the Board of the Foreign Service are carried out by the AID Board of Review and Appeals, hereinafter referred to as "the Board."

c. Detailed procedures for effecting separations for the reasons cited in the above quotation are set forth in HB 30, Ch 5.

2. Legal Basis

a. This section implements that portion of Section 637(a) of the Foreign Service Act of 1946, as amended, quoted above, which requires a hearing by a Board in certain separation actions.

b. State Department Delegation of Authority No. 104, as amended, dated November 3, 1961, delegates to the Administrator of AID the authority available to the Board of Foreign Service under the Foreign Service Act of 1946, as amended.

3. Applicability

A U. S. citizen employee holding a Foreign Service Reserve or Foreign Service Staff appointment is entitled to a hearing by the AID Board of Review and Appeals:

a. If he holds an appointment without time limitation, and his separation is proposed because of unsatisfactory performance of his duties or other cause as will promote the efficiency of the Service.

b. If his separation is proposed because of misconduct, regardless of the nature or tenure of his appointment.

7H

4. Policy

It is Agency policy that hearings by the Board of Review and Appeals be conducted in a fair and impartial manner. To this end, the employee concerned has the right to be present, to have a representative, to introduce pertinent evidence, to have witnesses whose appearance has been approved by the Board appear in his behalf, and to examine a transcript of the proceedings when the hearing is concluded. Furthermore, membership on the Board is restricted to persons who have no direct connection with the case under review.

5. Board Membership

The Board is composed of three regular members and two alternates all of whom serve on an ad hoc basis. Members and alternates are appointed by the Administrator of AID, on nomination by the Director, Office of Personnel and Manpower, to serve either in AID/W or in the field, as circumstances require. At least one of the members is to be an AID Foreign Service employee in the same general occupational field as the employee whose case is being heard. Personnel are appointed as members who have neither a supervisory nor subordinate relationship to the employee concerned, or to an official directly associated with the charges, and who, prior to their service on the Board, have taken no part in investigating the case, preferring charges, or preparing the recommendation for separation. The Administrator of AID designates one of the regular members to serve as chairman. Alternates serve only in the absence of regular members.

6. Functions and Responsibilities

a. The Board is responsible for conducting a hearing to ascertain whether the charges used as the basis for proposing the employee's separation are established. In fulfilling this responsibility, the Board:

(1) Convenes in a preliminary meeting to establish a plan for the hearing, and to:

(a) Receive from the employee charged and the Agency representative the names of witnesses each proposes to call to the extent such information can be made available.

(b) Approve or disapprove the appearance of witnesses proposed by the employee or the Agency representative. Approval is granted only for the appearance of those witnesses whom the Board considers can contribute significant testimony.

(c) Call, on its own motion, such witnesses as it considers necessary.

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(d) Determine whether the hearing should be held in AID/W or at a mutually convenient location abroad.

(2) Takes testimony and evidence, reviews pertinent information, asks questions, and otherwise gathers facts necessary to reach its conclusions.

(3) Postpones or recesses hearings from time to time in its discretion, and otherwise controls the course of the proceedings. This shall include the modification of the plan for the hearing to permit attendance of additional witnesses.

(4) Renders an opinion as to whether the basis for the separation action has been established, and makes appropriate recommendation to the Administrator of AID.

b. The Office or Bureau which prepared the notice of intent to separate:

(1) Requests the Employee Relations Branch, Office of Personnel and Manpower (PM/PS/ER), to arrange a hearing, if employee is entitled to such hearing.

(2) Prepares the case (in consultation with line officials) in support of charges upon which the proposed separation is based.

(3) Designates a representative (or representatives) to present its case at the hearing.

(4) Proposes to the Board the names of witnesses to give evidence in support of the charges against the employee or otherwise in connection with the proposed separation action.

c. Employee Relations Branch (PM/PS/ER)

(1) Recommends to the Director, SER/PM, potential Board members.

(2) Arranges a time and place for the hearing, which may be held in AID/W or in the field.

(3) Arranges for the attendance of all persons concerned.

(4) Provides the Board with necessary staff assistance if the hearing is held in AID/W.

7H

7. Conduct of Hearing

a. Timing

Normally, within ten workdays following referral of the case, the Chairman convenes the hearing, which is held during regular working hours.

b. Presence of Employee

(1) The employee charged has the right to be present throughout the hearing, to present testimony orally and in writing, to be accompanied or represented by one representative of his own choosing, to present witnesses whose presence is approved by the Board, and to cross-examine other witnesses.

(2) If the employee fails to appear at the hearing, it is held on the basis of available information, notwithstanding the employee's absence, unless, he has waived in writing his right to a hearing.

c. Opening Statement

In convening the hearing, the Chairman states the purpose of the hearing, introduces persons in attendance, and informs attendees of the Board's plan for the conduct of the hearing. The statement should mention that the proceedings are to be informal and that legal rules of evidence are not to be applied.

d. Transcript of Testimony

(1) Testimony is taken verbatim, transcribed, and made a permanent part of the record of the case. The transcript includes a copy of the charges and the reply.

(2) The employee or his representative may inspect the transcript and the exhibits presented, except insofar as modification of this privilege may be necessary because of security regulations or foreign policy considerations. The employee may, at any time prior to final consideration of the case by the Board, enter a signed dissent to any statement in the transcript which he believes to be inaccurate.

8. Board Recommendation and Decision by Administrator

a. The Board, upon completion of the hearing:

(1) Convenes in closed session to document its findings, and to determine whether any or all of the charges set forth in the letter of intention to separate have been established.

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(2) Forwards its recommendations, including its findings and conclusions and any dissenting opinions, through the Director, Office of Personnel and Manpower, to the Administrator of AID within ten workdays following the close of the hearing. A transcript of the hearing and any dissenting statement by the employee accompany the recommendation to the Administrator.

b. The Administrator of AID, on the basis of the transcript of the hearing, the Board's findings, and comments thereon by the Director, Office of Personnel and Manpower, makes the decision and signs the notice to the employee.

c. The responsible personnel office forwards to the employee the written notice of decision within five days thereof. Separation actions are issued by the AID/W personnel office which advises the Mission of such action to permit field issuance of separation travel authorization, where appropriate.

9. Travel

a. Travel of Employee

If the hearing by the Board is held at a place other than the employee's current post of assignment, the employee may be issued appropriate travel orders in accordance with AID travel regulations.

b. Travel of Witnesses

(1) AID Employees

AID employees called by the Board, or approved by the Board as witnesses, are considered to be on consultation if the hearing is held at a place other than the post of duty. Their travel expenses and per diem to the place of hearing are therefore authorized in accordance with AID foreign service travel regulations or Standardized Government Travel Regulations, as appropriate.

(2) Witnesses Other Than AID Employees

Witnesses other than AID employees who are called by the Board, or approved by the Board, and who do not reside within commuting distance of the place where the hearing is held are entitled to travel expenses as follows:

(a) A witness who is employed by another Government agency may be allowed travel expenses and per diem pursuant to the AID foreign service travel regulations if such regulations are applicable to him in his employing agency. Otherwise, he is entitled to travel expenses and per diem pursuant to Standardized Government Travel Regulations.

7H9b(2)

(b) A witness from the armed forces is allowed travel expenses and per diem pursuant to the regulations pertaining to his service for services performed for another Government agency.

(c) A witness who is neither employed by another Government agency nor a member of the armed forces is allowed travel expenses and per diem allowances in accordance with travel regulations governing invitational travel.

10. Resignation

If an employee submits his resignation during the Board proceedings, the resignation is accepted and appropriate notification is made on the AID 4-520, Notification of Personnel Action, describing the circumstances under which the employee resigned. (See also Ch 1B.)

7I. Separation for Cause - Foreign Service

Refer to HB 30, Ch 5A.

7J. Separation During Probationary Period - AID Employees in the Competitive Service

Refer to HB 30, Ch 2F.

7K. Reduction in Force - AID/W Employees

Refer to HB 30, Ch 2B.

7L. Reduction in Force - AID Foreign Service

Refer to HB 30, Ch 2C.

7M. Selection-Out of Foreign Service Personnel

Refer to HB 30, Ch 2D.

7N. Separation for Disability - Foreign Service

Refer to HB 30, Ch 2G.

7-O. Separation - Failure to Accept Assignment - AID Foreign Service

Refer to HB 30, Ch 5B.

Appendix B. Form for Performance Rating Appeals

Optional Form 6. Performance Rating Appeal

OPTIONAL FORM 6
U.S. CIVIL SERVICE COMMISSION

PERFORMANCE RATING APPEAL
(Submit appeal in quadruplicate)

1. TO BOARD OF REVIEW FOR (*write in name of your agency*)		2. NAME OF APPELLANT	
3. ORGANIZATION (*Bureau, Division, Section, or Unit*)		4. HOME ADDRESS OF APPELLANT	
5. ADJECTIVE RATING APPEALED	6. ADJECTIVE RATING DESIRED	7. HOME TELEPHONE	8. OFFICE TELEPHONE EXTENSION
9. RATING PERIOD ENDED	10. DATE NOTICE RECEIVED	11. POSITION HELD AT TIME OF RATING	
12. WAS RATING APPEALED ADMINISTRATIVELY? YES / NO	13. DATE NOTICE OF RESULT OF ADMINISTRATIVE APPEAL RECEIVED	14. SERVICE FIELD / DEPARTMENTAL	15. CLASSIFICATION GRADE

16. REASON FOR APPEAL

17. DATE	18. SIGNATURE OF APPELLANT

All communications to boards of review located in the Washington, D.C., Metropolitan Area should be addressed simply: PERFORMANCE RATING BOARD OF REVIEW, c/o UNITED STATES CIVIL SERVICE COMMISSION, WASHINGTON 25, D.C. Communications to boards of review located outside the Washington, D.C., Metropolitan Area should be addressed simply: PERFORMANCE RATING BOARD OF REVIEW, c/o the Civil Service Region having jurisdiction over the place where the board of review is located.

U.S. GOVERNMENT PRINTING OFFICE 16—84171-4

Appendix A. Information To Be Submitted With Requests for Classification Actions or Decisions by the Commission

A-1. CLASSIFICATION TO GRADES GS-16, GS-17, or GS-18

a. Classification. When a department proposes a position for classification in grade GS-16, GS-17, or GS-18, the request to the Commission must identify the position by title, organizational location, and geographical location. The request must include the following:

(1) An individual description of the position, on Optional Form 8, in duplicate;

(2) Pertinent functional or organizational charts;

(3) An analysis and evaluation of the duties and responsibilities, including a statement of the qualification requirements of the work;

(4) The agency's recommendation, with reasons; and

(5)(a) Information, including a list or organizational chart, specifically showing positions (those reporting to the position under consideration as well as collateral positions) which the agency will consider for upgrading to the GS-13 level or above if the immediate proposal is approved; or

(b) A positive statement that approval of the immediate proposal will not result in any known effect on the classification of other positions.

b. Schedule C. (1) When a position is proposed for both classification in GS-16, GS-17, and GS-18 and placement in Schedule C, the agency should simultaneously submit two separate letters to the Commission. One of these should contain the request for classification with the required documentation. The other should contain the request for Schedule C exception, including the information and documentation described in chapter 213.

(2) When an agency proposes that a position already in Schedule C be classified in grade GS-16, GS-17, or GS-18, the new description should be submitted for review for continued Schedule C eligibility. This review is not required, however, in any case where there has been no change in duties, responsibilities, qualifications requirements, or authority vested in the position since it was placed in Schedule C. The letter proposing a new classification for such a position should contain a certification to this effect.

A-2. AGENCY REQUESTS FOR FORMAL CLASSIFICATION DECISIONS

a. When requesting formal classification decisions (other than proposals for GS-16, -17, or -18) by the Commission, agencies must forward two copies of:

(1) A complete position description, on Optional Form 8, which conforms with the established standard of adequacy;

(2) Information about the place of the position in the organization (organizational and functional charts are desirable);

(3) A full explanation of the problem; and

(4) Reasons for the request (including the reasons why the agency has not been able to reach a decision on the case).

A-3. APPEALS

a. Employee appeals. An employee must file his appeal in writing. Wherever possible, he and his supervisor should agree on the description of duties and responsibilities performed, before he files his appeal. The appellant should submit:

(1) His name and mailing address;

(2) Location of his official headquarters;

(3) Exact location in the organizational structure of the unit in which he works;

(4) Present title and grade of his position;

(5) The requested title and grade, or other classification action;

(6) A description of the work he performs or, if appropriate, a statement that he considers his official position description to be a complete and accurate description of his work;

(7) Reasons why he believes his position is erroneously classified, or should be brought under or excluded from the General Schedule; and

(8) A statement of any facts that he thinks may affect the appeal. (If he wishes, he may refer to any classification standards which he believes bear on his case.)

b. **Agency responsibility for employee appeal content.** When an agency forwards an employee's appeal to the Commission, it should see that the file contains the information listed below. If an employee sends his appeal directly to the Commission, it will ask his agency for any of this information that may be needed to complete the documentation:

(1) Complete identification of the position, including position number;

(2) Specific information about the position's place in the organization, preferably by location on organizational and functional charts;

(3) A copy of the official position description which the Commission may keep;

(4) Any supplementary information bearing on the position's duties and responsibilities, including a full analysis of any points on which the agency disagrees with the employee's description of his work;

(5) The agency's justification for any of its decisions which are at issue in the appeal; and

(6) The action the agency recommends, with reasons.

c. **Agency appeals.** An appeal by an agency to the Commission must contain all the information required for an employee appeal, as well as the reasons and justification for filing the appeal.

d. **Changes in employment status.** If an appellant's employment status changes while a decision on his appeal is known to be pending, his agency should notify the Commission of the nature and circumstances of the change. The Commission will also ask appellants to submit information on status changes when it acknowledges their appeals.

Subchapter 6. Appeals

6-1. AGENCY APPEALS PROCEDURES

a. Establishment of internal appeals procedures. The Commission strongly recommends that each agency establish and publish procedures for the processing of and deciding on position classification appeals These procedures should be made known, in writing, to all employees. By providing internal appeal procedures at one or more administrative levels up to the office responsible for the classification program of the agency, the opportunity is afforded for corrective action within the agency, if warranted.

b. Notice of appeal rights. When an agency makes a classification decision that will lead to a loss in grade or compensation, it must notify the affected employee of its decision promptly and in writing. The notice must tell the employee about his rights of appeal to the agency and to the Commission, including the right to appeal directly to the Commission if he wishes. The notice must specify the time limits within which the employee must file his appeal if he is to establish or preserve his rights to retroactive adjustments. (See paragraph 6-4c.)

c. Other appeal rights. If an employee has any other rights of appeal, he should be told of these as well. When an employee who appeals an adverse action under any of the Commission's regulations also requests a review of a classification decision, that aspect of his appeal from the adverse action will be processed as a classification appeal.

6-2. WHAT MAY BE APPEALED TO THE COMMISSION

a. By an employee. Whether the classification decision in question was made by the Commission or by his agency, an employee may appeal at any time (through a representative designated in writing, if he wishes):

(1) The class or grade of his position under the General Schedule.

(2) The coverage of his position by the General Schedule. (This latter issue may not be appealed by employees in the Office of the Architect of the Capitol.)

b. By an agency. The head of an agency, or his authorized representative, may appeal any classification decision that the Commission has made about any position in his agency, except as noted in section 6-7 below. Appeals by agencies from Commission classification decisions or certificates must be made in writing to the appropriate office of the Commission.

6-3. FORWARDING APPEALS TO THE COMMISSION

a. Employee's option. An employee need not appeal to his agency before appealing to the Commission, but he is encouraged to do so. If he decides to appeal to the Commission, he is urged to file his appeal through his own agency. He may, however, send it directly to the appropriate office of the Commission if he so prefers. Simultaneous appeals to the agency and to the Commission should be avoided. Whichever course he decides to follow, he is urged to submit a complete appeal (appendix A provides a list of items which the employee should submit with his appeal).

b. Agency's option. Even though an appeal is addressed to an agency, it may be forwarded to the Commission if the agency prefers to have the Commission decide the appeal. If it elects to do this, the appeal must be forwarded within 30 →calendar← days of its receipt from the employee.

c. **Mandatory referrals.** Appeals must be forwarded to the Commission within 30 calendar days of their receipt from an employee when:

(1) The appeal was addressed to the Commission, through the agency, and the agency has not acted favorably on it in the meantime; and

(2) Regardless of how it is addressed, if the agency does not have authority to decide the appeal. This may occur, for example, because the classification action was ordered by the Commission, or because the position involved is that of a hearing examiner.

d. **Notice to employee.** When an agency forwards an appeal to the Commission, it should tell the employee concerned in writing that it has done so.

e. **Office to which appeals should be submitted.** Appeals involving, or requesting that positions be placed in, grades GS-16, GS-17, or GS-18; those involving hearing examiner positions; and those involving positions in the metropolitan area of Washington, D.C., or outside the continental limits of the United States, except as noted in appendix B, should be submitted to the central office of the Commission. Appeals concerning positions located in any other geographic areas should be submitted to the appropriate regional or branch office of the Commission.

6-4. WHEN APPEALS MAY BE FILED

a. **General rule.** It is the general rule that an appeal from a classification decision of either an agency or the Commission may be filed with the Commission at any time.

b. **Special rules for protection of retroactive benefits.** An appeal decision which reverses a classification action leading to a downgrading or to loss of compensation may be made retroactive only if the initial classification appeal is filed on a timely basis. To be timely:

(1) An initial classification appeal must be filed with either an agency or the Commission no later than 15 calendar days after the effective date of the action taken as a result of the classification decision;

(2) A further appeal from an agency's appeal decision must be filed with the Commission no later than 15 calendar days after the appeal decision is received, or 15 calendar days after the effective date of the action taken as a result of the classification decision, whichever is later.

c. **Possible extension of time limits.** The Commission may extend the time limits stated above if an appellant can show that he was not notified of these limits and was not otherwise aware of them or that circumstances beyond his control kept him from filing within these imits.

6-5. ACTIONS ON AN APPEAL TO THE COMMISSION

a. **By appellants.** Appellants must cooperate in expediting their appeals by furnishing information requested by the Commission.

b. **By agencies.** When an employee directs an appeal to the Commission through his agency, the agency must dispose of the appeal within 30 calendar days of its receipt. If it agrees with the employee and has the authority to take corrective action, it may do so and close out the appeal. In all other cases, it must submit the file to the Commission and let the employee know, in writing, how it has disposed of his appeal.

c. **By the Commission.** When the Commission receives an appeal from an employee or an agency, it will make whatever inquiries it considers necessary. It may ask employees and agencies to furnish facts, either orally

or in writing. Ordinarily, the Commission will not reinvestigate classification actions resulting from Commission audits unless the appeal is based on additional or changed facts. It will permit the employee and his agency to inspect the appeal file on request.

d. **Notification of appellants.** The Commission will notify appellants of its decisions in writing. In employee appeal cases, copies of the decisions will also be sent simultaneously to the agencies concerned. Notice to an agency will be sent to the office having authority to classify the position involved.

e. **Cancellation of appeals.** The Commission will cancel employee appeals whenever appellants request cancellation in writing or, if there is no possibility of retroactive benefit, when it is learned that the employee is no longer in the position which was the subject of the appeal. It will notify both the appellant and the agency of the cancellation. Appeals may also be canceled by the Commission if an appellant does not cooperate in furnishing the information he is asked to give. As an alternative, the Commission may adjudicate the appeal on the basis of available information, if this is feasible. An appeal canceled for this reason cannot be reopened unless the appellant is able to show that circumstances beyond his control kept him from prosecuting his appeal.

f. **Appeals involving retroactive benefits.** Unless the appellant or his beneficiary withdraws the appeal in writing, any appeal in which there is a possibility of retroactive benefits will be continued until a decision is reached, whether or not the appellant remains in the position concerned.

6-6. EFFECT OF FILING AN APPEAL

a. **Effect on agency actions.** Filing an appeal to the Commission under section 5112(b) of title 5, United States Code, does not automatically stop a classification action taken by an agency on its own motion. The agency's own policies govern in such cases.

b. **Effect on Commission actions.** An appeal to the Commission does not stop a classification action ordered or taken by the Commission.

c. **Effect on loss of grade or pay.** Filing an appeal with the Commission on a timely basis, as defined in section 6-4 above, may establish or preserve certain rights to retroactive adjustment when classification actions have led to downgrading or loss of pay. In these cases, it is important for employees to have full information about the conditions that must be met before adjustments can be retroactive.

d. **Effect on other appeal rights.** Filing an appeal with the Commission under 5 U.S.C. 5112(b) does not affect any rights an employee may have to file appeals with his agency or the Commission under other laws or regulations.

6-7. EFFECT OF COMMISSION APPEAL DECISIONS

a. **Finality of decisions.** All Commission classification appeal decisions constitute certificates and are mandatory and binding on administrative, certifying, payroll, disbursing, and accounting officers of the Government. These decisions are not subject to further appeal. However, classification appeal decisions made by the Commission in an appeal under any of the Commission's regulations (e.g., subpart B of part 752) are subject to additional consideration, along with other issues, if further appeal is made in accordance with the regulations concerned.

b. **Reconsideration at Commission discretion.** (1) The Commission's Bureau of Inspections may, at its discretion, reopen, and reconsider any classification appeal decision made by a Commission regional office. This authority may be used under circumstances such as the following:

(a) An employee or an agency presents material facts not previously considered by the regional office involved.

(b) There is room for reasonable doubt of the appropriateness of a regional office decision.

(c) The potential impact of a regional office decision on similar positions under other regional offices is sufficiently significant to make central review of the decision desirable.

(2) The Commissioners may, at their discretion, reopen and reconsider any appeal decision.

c. Effect on downgrading or loss of compensation. An appeal decision which corrects a downgrading or a loss of pay retroactively will require correction of records. It may, of course, also require supplemental salary payments. The Commission's pay regulations will determine the extent to which retroactive adjustments are appropriate. All administrative actions taken after a demotion must be reviewed in the light of the decision and each action of this kind must be reconstructed on the basis of the classification considered proper in the decision with full regard to the rules governing effective dates.

Subchapter 7. Effective Dates of Position Classification Actions or Decisions

7-1. EFFECTIVE DATES FOR NON-APPEAL ACTIONS

a. **Action by an agency.** An agency classification action takes effect on the date the action is approved unless the agency specifically sets a later effective date. The Comptroller General has emphasized that any later effective date which is administratively fixed by an agency must be "within a reasonable period of time" (37 Comp. Gen. 492). The agency may not make the action effective retroactively.

b. **Action required by Commission certificate.** A Commission certificate is effective no earlier than the date of its receipt in an agency and no later than the beginning of the fourth pay period after its receipt, unless a later date is specifically stated in the certificate. Commission certificates are not effective retroactively except as provided in the case of certain appeal decisions.

c. **Delaying effective dates.** When a number of positions are identified for downgrading as a result of a classification survey—by either the agency or the Commission—or as a result of a new classification standard, the agency may consult with the appropriate Commission office on a plan to bring positions into compliance with standards within a reasonable period of time, up to one year, while minimizing demotions of employees involved. Any agency proposals of this nature must be presented and approved before formal classification action is taken. The plan developed by the agency to implement the classification findings will include such matters as:

—An agreement that any vacant positions will be reclassified immediately and that any positions becoming vacant will not be filled before they have been correctly reclassified.

—An analysis of turnover rates, needs for skills in the affected workforce in other assignments, and a determination of the impact of potential attrition on the positions.

—A determination of existing vacancies at the same or higher grades to which employees involved could be assigned.

—An analysis of anticipated changes or additions in assigned functions, workload, and organization which would have an impact on required skills and manpower.

—An analysis of the degree to which jobs could be reconstructed or other changes in methods of work which might be made that would lessen the impact on employees.

—An analysis of training possibilities that might lead to opportunity for employees who otherwise could not be reassigned without loss in grade.

7-2. GENERAL RULE FOR EFFECTIVE DATES FOR APPEAL DECISIONS

The general rule is that a change brought about by an appeal decision takes effect no earlier than the date of the appeal decision and no later than the beginning of the fourth pay period following the date of decision unless a later date is specified in the decision.

7-3. RETROACTIVE EFFECTIVE DATES FOR APPEAL DECISIONS

a. **Conditions.** A classification change resulting from an appeal decision is retroactive to the date of the adverse action when all of the following conditions are met:

(1) The appeal decision reverses, in whole or in part, a classification action that led to a loss in grade or pay;

(2) The appeal decision is based on duties and responsibilities existing at the time of the adverse classification action rather than on any assigned later; and

(3) The initial appeal, whether to an agency or to the Commission, and any subsequent appeals are filed on a timely basis as defined in subchapter 6 of this chapter.

b. **Decision resulting in higher grade.** Sometimes a decision on a downgrading appeal places a position in a grade higher than the one it was in before the downgrading occurred. In these cases, the grade of the position just before the downgrading occurred is to be restored retroactively if conditions in subparagraphs (2) and (3) above are met. The effective date of the remainder of the upgrading called for by the appeal decision is governed by the general rule.

CHAPTER 8

INVOLUNTARY SEPARATIONS - FOREIGN SERVICE (INCLUDING FURLOUGH)

8A. Purpose

This chapter defines the circumstances under which Foreign Service (FS) employees may be involuntarily separated from the Service and establishes the procedures for each type of involuntary separation (and the corresponding chapter section) including:

1. Emergency Furloughs and Furloughs of Less Than 30 Calendar Days (8E)
2. Termination of Limited Appointments (8F)
3. Separation for Disability (8G)
4. Failure of a Career Candidate to Meet Tenuring Requirements (see also HB 25, Supp. 35B) (8H)
5. Mandatory Retirement (see also HB 30, Supp. 3B) (8I)
6. Expiration of Time-in-Class (see also HB 25, Ch. 37) (8J)
7. Failure to Accept Assignment (see also HB 30, Ch. 5D and 2E) (8K)
8. Separation for Cause (see also HB 30, Ch. 5) (8L)
9. Expiration of a Limited Career Extension (see also HB 25, Supp. 40D) (8M)

This chapter also outlines separation travel policies.

8B. Applicability

This chapter applies to all U.S. citizen, direct-hire career, career candidate and non-career FS, Senior Foreign Service (SFS) and Resident-Hire employees.

8C. Authorities and References

1. The Foreign Service Act of 1980, as amended
2. The Foreign Affairs Manual
3. 5 CFR 351
4. 5 USC 3501-3504
5. HB 22, Ch. 9, "Foreign Service Travel"

8D. Definitions

a. Active Duty Period. The portion of the notice period in which an employee is in work status.

b. Competitive Area for SFS and FS employees is worldwide.

8D

c. Competitive Level. All FS employees in the same service category (SFS or FS), the same occupational groupings and backstop codes, and the same salary class (CM, MC, OC, or FO/FP). In addition to salary class (CM, MC, OC), SFS employees compete within the tier level associated with their currently assigned position under the Agency's two-tier EPAP assignment system. The competitive level of an FS employee is determined by his/her permanent salary class.

d. Employing Office. The Office of Human Resource Management and Development (HRDM) for all employees except:

(1) Executive Management (HRDM/EM) for employees assigned to executive level positions;

(2) Resource Management Office, Inspector General (IG/RM) for employees in BS-08 (Auditors and Investigators);

(3) Staffing/Career Development (HRDM/SCD) for all other Foreign Service employees; and,

(4) The Executive Office, or equivalent at post, for Resident-Hire employees.

e. Government Service. The total of all periods of creditable military service and civilian service in the executive, legislative, and judicial branches of the Federal Government and in the District of Columbia Government. As a general rule, the service date shown on form SF-50, Notification of Personnel Action, is used in computing government service.

f. Post. An AID mission and office.

g. Notice Period. The initial period stipulated in the original notice issued to an employee which tells him/her the period of time he/she is to be carried on the rolls of the Agency prior to his/her separation or furlough.

h. Occupational categories. Positions so similar in all important respects that the Agency can readily move an employee from one position to another without significant training and without impairing the Agency's program. Characteristics shared by all positions in an occupational category are similarity of duties, responsibilities, pay schedule, and terms of appointment; and similarity of requirements for experience, training, skills and aptitudes. The occupational category/code of employees on a complement is that of the last permanent position held by the employee, either overseas or in the United States.

8D

i. Primary Skill Code. The skill in which the employee is best qualified by experience, education and training, even though he/she may not currently occupy a position with that code. Secondary and tertiary skills codes are assigned to the extent that the employee's record reflects the possession of other skills in addition to the primary skill.

j. Personnel Office. The respective unit in the Office of Personnel Management (PM) responsible for FS personnel administration.

k. Geographic Bureau. The geographical division responsible for the operational activities of FS employees assigned within its geographic region, and AID/W Bureaus and Staff Offices for nonregional overseas personnel.

l. Retention Register. A list of employees in a competitive level. Employee are grouped by tenure.

m. Retention Standing. The precise rank among competing employees on a retention register.

n. Tenure Group. The group into which employees of the same competitive level are classified, based on type of appointment and salary class, for the purpose of determining retention standing.

o. Veteran-preference employee. An employee entitled to preference under 5 U.S.C. 2108.

p. Career Members of the Foreign Service. Those employees appointed under the authorities of Section 302 (commissioned), or Section 303 (noncommissioned) of the Foreign Service Act of 1980.

q. Furlough. The placing of an employee in a temporary nonduty, nonpay status due to emergency reasons, unforeseeable lapses in funding, breakdowns in equipment, etc., or where there is a temporary lack of work or other nondisciplinary reasons.

8E. <u>Emergency Furloughs and Furloughs for 30 Days or Less</u>

1. Purpose

This section provides policies and procedures for effecting emergency and short-term (up to 30 calendar days or 22 work days) furlough of FS and SFS.

8E

2. Applicability

a. This section applies to all U.S. citizen FS and SFS employees, except those AID employees serving under Presidential appointments, with or without Senate confirmation, not subject to leave regulations in the Federal service (5 USC 6301).

b. These procedures apply only to furloughs of 30 calendar days (22 work days) or less. Furloughs of over 30 calendar days are covered separately in this chapter.

3. Authorities and References

a. The Foreign Service Act of 1980, as amended, Sec. 201, 205 and 206
b. 22 USC 3921, 3925, 3926 and 4105(a)
c. The Foreign Affairs Act, as amended, Sec. 301, 621 and 625(a)

4. Policies

a. Before actually initiating a furlough, the Agency will explore all other means of responding to the need for a furlough and take all necessary steps possible to avoid such an action.

b. The Agency will make certain the burden of any furlough is equitably shared by FS employees as long as doing so does not interfere with the effective and efficient management of AID programs, operations and resources.

c. Part-time FS employees will be furloughed in proportion to their work schedule.

d. The rights and entitlements of FS employees will be protected during periods of furlough as permitted by statute and regulation.

e. The Agency will make a reasonable effort to accommodate the expressed personal preferences of FS employees (e.g., a desire to combine the use of leave and furlough time into a consecutive period, or develop a furlough plan that will provide some income every pay period) in scheduling any furloughs to the extent they are consistent with work requirements, effective management of programs and operations, and budgetary constraints.

8E

5. Responsibilities

a. On the recommendation of the Director, HRDM, the AID Administrator, or designee, will make the final decision on using the following furlough procedures and on the extent and duration of furloughs as a means of responding to emergencies or other nondisciplinary reasons.

b. The Director, HRDM, (HRDM/OD) will implement the furlough in consultation with Agency management.

c. The Chief, Staffing/Career Development (HRDM/SCD), is the designated official who will sign the notice of proposed furlough affecting FS employees.

6. Procedures

a. Except under emergency conditions, employees will be given 30 days advance written notice by letter or cable or other means stating the specific reasons for the furlough and its duration. The advance notice of a proposed furlough shall include, but is not limited to:

(1) Reason for the furlough;

(2) Maximum length of the furlough (more definite and detailed specifications if known, e.g. the specific dates and length of the furlough);

(3) When some, but not all employees in a particular class are being furloughed, the notice of proposal shall state the basis for selecting a particular employee for furlough;

(4) Notice that regulations and records pertinent to the action are available and location of such regulations and records;

(5) Right of employees to respond within 10 calendar days to the proposed furlough; extension of the 10 calendar day time limit will be considered provided the employee gives specific reasons for the requested extension.

(6) Entitlement to a reasonable amount of official time to prepare response;

(7) Entitlement to representation; and,

(8) Prohibition of unpaid voluntary services.

8E

b. General information on rights and entitlements will be provided in a separate document concurrent with the proposed notice. To the extent available, this information will include, but will not be limited to the effect of furloughs on allowances, differentials and benefits.

c. The advance written notice and opportunity to answer are not necessary for implementing a furlough without pay when due to unforeseen emergency circumstances, such as lapses of appropriations, sudden breakdowns in equipment, acts of nature, or other circumstances requiring immediate curtailment of activities. In such cases, the Agency will provide employees as much advance notice of furlough action as possible.

d. Except for unforeseen and compelling circumstances, employees who wish to respond to the notice of proposed furlough have up to ten calendar days to do so either orally or in writing to the Director, HRDM/OD together with documentary evidence in support of their appeal. When an employee gives an oral response, the Agency will make a written summary of the conversation. A copy of the summary will be provided to the employee for review; if corrections to the document are necessary, the employee will provide them as expeditiously as possible within three (3) workdays. The Director, HRDM/OD, or designee, will make the final decision in each case.

e. Each employee will be entitled to a reasonable amount (normally up to four hours) of official time to prepare his/her response. Employee representatives also shall be entitled to such reasonable amount of official time to assist employees in their responses. In making a response, employees have a right to the representative of their choice, except that the Director, HRDM/OD, may disallow the choice of an individual as a representative. If a representative is disallowed, the Agency shall fully state the reasons and provide the employee reasonable time to find another representative. The Agency's decision will be submitted in writing at the earliest practicable date or the effective date of the furlough.

f. The notice of final decision to furlough shall include but is not limited to:

(1) Decision and the reasons therefore;

(2) Maximum length of furlough;

(3) Prohibition on unpaid voluntary services; and,

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(4) Information for employees as to how to submit for management's consideration their preferences for alternate furlough days, if appropriate. Favorable consideration will be dependent upon the nature of the furlough and its effect on Agency operations, and other factors such as cost effectiveness, management effectiveness and safety concerns. Employee requests may include but will not be limited to:

a. continuous and discontinuous furlough dates;

b. furlough date(s) to coincide with religious observances;

c. furlough date(s) to coincide with the beginning or end of the employee's weekly tour of duty; and,

d. other "good cause" requests for a specific date(s) for furlough.

Employee will be advised in writing of the reason(s), if request is denied.

(5) An employee may grieve under the provisions and coverage of 3 FAM 660 the final decision to furlough.

g. Periods in furlough status will be documented in accordance with established procedures for recording personnel actions (i.e., issuance of an SF-50).

h. Requests for reconsideration of the Agency decision may be submitted to HRDM/OD. The request for reconsideration must address: (1) changes in the employee's personal circumstances that would warrant reconsideration and/or (2) substantive changes to previously provided information relating to the Agency's furlough implementation plans. Every effort will be made to respond to requests for reconsideration within ten (10) calendar days.

7. Rights and Entitlements During Periods of Furlough

a. Employees in furlough status cannot be required to perform official duties, nor can the Agency accept the voluntary services of employees while in furlough status.

b. Employees on detail or other assignment whose salaries are not paid out of funds appropriated to the Agency are not subject to furlough when the reason for the furlough is a shortage of funds.

8E7

c. Employees may engage in outside employment during periods of furlough in accordance with the guidelines in 3 FAM 620 and Part 10 of Title 22 of the Code of Federal Regulations (CFR).

d. Employees who perform court duty during periods of furlough may retain the court pay.

e. An employee may not be placed on paid leave in lieu of furlough.

f. Employees cannot be furloughed on holidays, i.e., will not be involuntarily placed in a nonpay status on a holiday.

g. Enrollment in health plans continues during furlough but employees are liable for payment of their share of the enrollment costs during such periods. Employees' share of enrollment costs will be deducted from any remaining biweekly pay. If such pay is insufficient to pay these costs, employees may pay the costs during or after returning from a furlough by check or payroll deduction. There is a 365-day limit on enrollment in a nonpay status.

h. Life insurance coverage remains in effect without cost to the employees while in furlough status. There is a 365-day limit on enrollment in a nonpay status.

i. Retirement contributions during periods of furlough are in proportion to the basic pay of the employee. As long as an employee does not exceed six months on nonpay (furlough) status in a calendar year, retirement credited is not affected.

j. An aggregate of no more than six months of nonpay/furlough status in a year is creditable service in computing annual leave accrual rates. When a full-time employee accumulates 80 hours in nonpay status, including furlough, his/her annual and sick leave balances are reduced by the number of hours accrued in a pay period.

k. Entitlement to within-class increases remains unchanged by time in a furlough status.

l. Should a law be enacted allowing retroactive payment for period of furlough, the Agency will change the furlough days to administrative leave days, and compensate each employee accordingly.

8. Furlough and Time-in-Class Calculations

Time spent in furlough status will count toward time-in-class calculations.

8E

9. Limited Appointments

Limited appointments will not be extended by the number of days in furlough status, nor may such an appointment be extended beyond the five-year maximum.

8F. Termination of Limited Appointments

1. Purpose

This section establishes the policies and procedures for terminating an employee's limited appointment.

2. Authority

Sec. 611 of the Foreign Service Act of 1980, as amended, authorizes the separation of an SFS or FS employee serving under a limited appointment or family members serving under Sec. 408 appointments.

3. Applicability

This section applies to non-career FS and SFS employees with limited appointments.

4. Policies

a. The Agency may retain a non-career employee for as long as his/her services can, in the opinion of the employing office, be advantageously used by the Agency.

b. The Agency shall provide employees reasonable advance notice regarding any change in their status prior to the effective date of such change.

c. The Agency shall inform employees who receive an initial limited appointment that the not-to-exceed (NTE) date shown on the appointment document does not preclude the possibility of an earlier termination date.

d. In cases of a Reduction-In-Force, the Agency will terminate all non-career employees prior to the termination of career candidate employees.

8F

5. Procedures and Responsibilities

a. Notice to Employee

(1) Authorization and Signature

The Director, HRDM/OD, or designee, authorizes and signs a notice of separation to the employee. HRDM/OD may authorize the Mission Director or AID Representative to sign such notice. If at any time prior to the date of separation a new assignment is arranged for the employee, the decision and notice to separate may be rescinded.

(2) Time of Delivery and Effective Date

The notice, specifying the date by which separation shall be effective, is forwarded to the employee, either by or through the Mission Director, AID Representative or AID Affairs Officer, as appropriate, with a copy retained by post. In the case of a limited employee in the United States, such notice may be delivered directly without transmission through the Mission. Delivery date is to be as far in advance of the proposed termination date as possible, and planned to allow ample time for direct travel to employee's place of residence, medical clearance, and/or consultation in AID/W, if applicable. In no case does the employee receive the letter later than 30 days (60 days if he/she has reemployment rights in another federal agency) before the effective date of his/her separation.

(3) Content of Notice

The notice informs the employee that the appointment is being allowed to expire in accordance with the NTE date shown on the appointing document, form SF-50, or being terminated prior to the NTE date shown. If the employee has reemployment rights in AID/W or another federal agency, the notice informs the employee that should he/she desire to exercise such rights, he/she must apply to his/her parent agency no later than 30 days after the effective date of personnel action terminating his appointment.

b. No Appeal Provided

There is no right of appeal for an employee separated as a result of termination of limited appointment.

8G. Separation for Disability

1. Purpose

This section establishes the policies and procedures to separate an FS employee medically disqualified for continued service, or for whom no assignment can be found because of a limited medical clearance.

2. Applicability

This section applies to all U.S. citizen employees in the AID Foreign Service.

3. Authority

The Foreign Service Act of 1980 authorizes medical examinations of FS employees. Authority to separate employees medically unable for continued service is inherent in the Agency's authority to prescribe qualifications and standards for employment in the Foreign Service.

4. Policy

a. SFS and FS employees must meet medical standards for continued service overseas.

b. The Agency shall explore courses of alternative action, i.e., reassignment, assignment to regional complement, use of leave or disability retirement before reaching a decision to separate the employee for disability, or, when an employee fails to meet medical standards.

c. The Agency shall defer the effective date of separation pending the Foreign Service Retirement and Disability System adjudication of an application for disability retirement, if one was filed, and pending separation medical clearance by the Department of State, Medical Services (M/MED).

5. Action Following Receipt of Medical Report

Following receipt of a report by M/MED that an FS employee is medically disqualified for service at an overseas post or is given medical clearance for only limited overseas duty (either of which may be permanent or temporary), the Agency considers the following courses of action, as appropriate, based on the medical report, before a decision is reached that separation for disability is necessary:

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a. Temporary or permanent reassignment to another position overseas or in AID/W, if feasible, giving due regard to employee's physical condition and the requirements of the position. The possibility should not be overlooked that the employee would be willing to accept reassignment to an established position two grades below personal grade that would be less demanding.

b. Assignment to complement if there is reasonable expectation that the employee can be medically qualified for overseas service within one year following such assignment.

c. Leave for purpose of recovery if the disabling condition is not permanent in nature. Such authorized leave can include all sick leave to the employee's credit and, as appropriate, annual leave, and LWOP.

d. Retraining of the employee for a position for which he/she has the basic qualifications and capabilities, if there are no reassignment possibilities for which he/she is fully qualified.

6. Application for Disability Retirement or Payments

a. If none of the above actions is practicable, HRDM/PMES/ESB notifies the employee of whatever benefits may be available to him/her as a disabled employee.

b. An employee eligible to apply for disability retirement will be advised that:

(1) HRDM/PMES/ESB will assist the employee in preparing and filing his/her application;

(2) he/she will be retained on the Agency rolls, in leave status if necessary, until the Director General of the Foreign Service, Department of State, has adjudicated the employee's application for retirement;

(3) if he/she does not have sufficient annual or sick leave, as appropriate, to cover the time his/her case is pending, he/she may request leave without pay.

c. If the employee has the required service to apply for disability retirement but declines to do so, the Agency shall, in exceptional circumstances, such as when the disabling condition is mental, file disability retirement application on behalf of the employee.

8G6

d. If the application for disability retirement is denied, the employee or the Agency, as appropriate, may appeal such decision.

7. Use of Separation Procedures

a. Separation action based on disability is initiated when:

(1) the employee lacks the service required for disability retirement;

(2) no application is made for disability retirement;

(3) application for disability retirement is denied;

(4) there is no other alternative to separation disability action.

b. The following instructions apply only in disability separations.

(1) Preparation of Notice to Employee

Advance notices of intent to separate are signed by the Chief, HRDM/SCD. If the case is referred for appeal, the notice of final decision is prepared for signature of the Administrator.

(2) Basis for the Proposed Action

If M/MED has found that the employee does not meet the medical requirements for continued overseas service, this finding is used as the basis for proposed separation. The notice informs the employee that he/she is entitled to a meeting with the Chief, HRDM/SCD, to discuss the medical report. If the Agency believes an employee to be disabled, but there has been no medical disqualification because the employee refuses or fails to submit to an examination, the proposed separation may be insubordination, i.e., refusal to submit to an examination; deficiencies observed in his performance, i.e., failure or inability to perform required duties; examples of how his/her condition constitutes a hazard to himself or to others; or for other reasons which evidence unsuitability for continued service overseas.

(3) Extension of Notice Period

In no case will the employee's separation take effect if his/her case is pending a decision on disability retirement benefits or is pending authorization by M/MED. In such case, the notice period is extended until such time as a decision is rendered. Extension for this purpose may be on an annual leave, sick leave, or LWOP, as appropriate.

8H. Failure to Meet Tenuring Requirements

The authority for separating career candidates for failure to meet established tenuring requirements is provided by Section 603 of the FSA of 1980 with implementing policies and procedures provided in HB 25, Supp 35B (FS-01s and below).

8I. Mandatory Retirement

The authority to mandate the retirement for age of FS employees is provided in Section 812 of the FSA of 1980 with implementing policies and procedures provided in HB 30, Supp. 3B.

8J. Expiration of Time-in-Class

The authority to separate FS employees for expiration of time-in-class, including members of the SFS serving under Limited Career Extensions, is provided in Sections 601 and 607 of the FSA of 1980 with implementing policies and procedures provided in HB 25, Ch. 37 (FS-01s and below).

8K. Failure to Accept Assignment

The authority to separate career employees for failure to accept assignments is provided in Section 504 of the FSA of 1980 with implementing policies and procedures provided in HB 30, Ch. 5.

8L. Separation for Cause

The authority to separate FS employees for cause is provided in Section 610 of the FSA of 1980 with implementing policies and procedures provided in HB 30, Ch. 5, Disciplinary Action.

8M. Expiration of a Limited Career Extension

The five year maximum duration of Limited Career Extensions accorded members of the SFS is authorized by Section 607(b)(2) with implementing policies and criteria provided in HB 25, Supp 40D.

8N. Separation Travel

1. Purpose

This section prescribes the circumstances under which an employee who is separating from the AID Foreign Service may be authorized travel and transportation of effects.

2. Applicability

These provisions apply to all U.S. citizen, Foreign Service employees, including employees of the participating agencies.

8N

3. Responsibility

The responsibility to authorize or approve travel and transportation of effects in connection with an employee's separation from Foreign Service is delegated to the employing office as defined in AID travel regulations for Foreign Service employees.

4. Policies

The employing office may authorize travel and transportation of effects for U.S. citizen employees meeting any of the following conditions:

a. An employee whose separation is involuntary.

b. An employee who receives official orders to enter the U.S. Armed Forces. Travel is not authorized, however, on the basis of notices to report for physical examination preliminary to induction or enlistment in the military service.

c. An employee serving in an executive position, whose resignation is accepted by the Administrator.

d. An employee who resigns:

(1) At the completion of his/her prescribed tour of duty;

(2) At the completion of his/her tour of duty when such tour is shortened under the provisions of HB 25;

(3) After the completion of five years of continuous service in the AID Foreign Service (including service on rotation in AID/W), at least six months of which has been during the employee's current tour;

(4) For reasons of a compelling personal and humanitarian nature which are acceptable to the Agency, such as:

(a) An employee or member of his family incurs a serious illness for which adequate medical treatment is not available at the post or within the area. Medical certification is required;

(b) A member of the employee's family (not at post) suffers an illness or death which imposes upon the employee the care of an invalid or maintenance of a home for minor children or aged kin;

(c) Employee or a member of his family is unable to adjust to living in a foreign area and continued employment in the area would result in breaking up the family group.

8N4

(5) Whenever such resignation is considered to be advantageous to the U. S. Government.

Service abroad by an employee of any U.S. Government Agency (including the armed forces) counts toward the service requirement set forth in (1), (2), and (3) above, if the employee was appointed abroad by AID without a break in service from the Agency in which he served provided the employee serves at least six months in the AID Foreign Service.

e. An employee who was converted to resident status during a tour of duty continues to be eligible for return travel at Agency expense upon completion of the initially prescribed tour. However, the employee, if also eligible to travel as a dependent of a Government employee, must elect to travel either as an employee or a dependent.

f. Employees who apply for optional retirement under the Civil Service Retirement Act and regulations issued pursuant to Public Law 89-205, when approved in advance by AID/W.

g. The above notwithstanding, an employee found guilty of a felony while serving under a Foreign Service appointment, shall not be eligible for separation travel regardless of whether separation is through resignation, retirement, or separation for cause. The Director for Personnel may grant an exception to this provision if the employee and/or family are assigned overseas at the time of separation.

ATTACHMENT 8A

SAMPLE LETTER TERMINATING EMPLOYEE'S

APPOINTMENT ON THE EXPIRATION DATE

Dear _____:

As you know, you are now serving under a limited appointment which expires on (date). This letter is to notify you that your appointment as (title, class, salary) will be terminated no later than the date shown on your appointment notification (SF-50). Accordingly, this letter will constitute formal notice of your separation upon the expiration of your present appointment pursuant to HB 30, Ch. 8.

Your separation will take effect as closely as possible to the date shown in the first paragraph above. However, in no case will you be separated earlier than 30 ("60" if employee has reemployment rights in another Federal agency) days after receipt of this letter, unless you request separation at an earlier date in writing. You should plan your departure from post by computing the time required for travel to your U.S. residence via Washington, D.C., up to 15 workdays temporary duty in AID/W, and then subtracting the total number of days computed from the approximate effective date shown above.

It is important that you and those dependents who traveled to your post complete the prescribed medical examinations before the effective date of your separation from the AID Foreign Service. If the prescribed medical examinations are not completed before the effective date of your separation, you will be deemed to have waived any future claim for medical examination, treatment, or care under the Foreign Service Act of 1980, as amended. The effective date of separation will not be delayed for failure to complete the prescribed medical examinations.

(Add if applicable) Our records indicate that you were granted reemployment rights in (name of agency). Should you desire to exercise these rights, you should apply to that agency no later than 30 days from the effective date of your separation from AID.

The enclosed sheet contains information which you should find useful in making your plans. On behalf of the Agency, let me express to you our gratitude and appreciation for the service you have rendered in this important program.

Sincerely Yours,

Title and Signature

ATTACHMENT 8B

SAMPLE LETTER

TERMINATING EMPLOYER'S LIMITED APPOINTMENT

PRIOR TO THE EXPIRATION (NTE) DATE

Dear _____:

As you know, you are now serving under an appointment which may not exceed (date). Accordingly, this letter will constitute formal notice that your appointment as (title, class, and salary) is being terminated earlier than planned, and your separation will be made under the provisions in HB 30, Ch. 8. (Reason may be inserted.)

Your separation will take effect as soon as possible after (1) your last day on active duty at the post, (date), which will be at least 30 calendar days after you receive this letter ("60" if the employee has reemployment rights), (2) the completion of allowable travel time to your approved separation residence in the U.S. via AID/W for temporary duty not in excess of 15 workdays. Earlier separation may be effected upon your written request.

It is important that you and those dependents who traveled to your post complete the prescribed medical examinations before the effective date of your separation from the AID Foreign Service. If the prescribed medical examinations are not completed before the effective date of your separation, you will be deemed to have waived any future claim for medical examination, treatment, or care under the Foreign Service Act of 1980, as amended. The effective date of separation will not be delayed for failure to complete the prescribed medical examinations.

(Add if applicable) Our records indicate that you were granted reemployment rights in (name of agency). Should you desire to exercise these rights, you should apply to that agency no later than 30 days from the effective date of your separation from AID.

The enclosed sheet contains information which you should find useful in making your plans. On behalf of the Agency, let me express to you our gratitude and appreciation for the service you have rendered in this important program.

ATTACHMENT 8C

INFORMATION FOR SEPARATED EMPLOYEES

TO BE FURNISHED AS ATTACHMENT TO SEPARATION NOTICE

You are entitled to return travel for yourself and your dependents from post to your approved separation residence in the United States, provided such travel is initiated within six months from your last day in pay status. Allowable travel time (that is, travel in pay status and per diem) will be granted for the travel period computed on the basis of the time required to return you to your home via Washington, D.C., by the usually traveled route as defined in AID travel regulations (HB 22, App 9A), provided such travel time is prior to the actual date of your separation.

Transportation of your household and personal effects at Government expense must begin within six months after your last day in pay status unless an earlier or later limitation is specified in the travel authorization or the time limitation is extended.

After your last day of active duty at post, you will be in a pay status during (1) the period of allowable travel time, (2) the approved period of temporary duty (consultation) in AID/Washington, and (3) the period during which you are on approved annual leave.

When you arrive in Washington, you should report to _____

_____

Arrangements will then be made for an interview with you to discuss such matters as Retirement eligibility, Employee Group Life Insurance, application for unemployment compensation, etc.

ATTACHMENT 8D

SAMPLE - NOTICE TO SEPARATE

UNDER PROCEDURES IN HB 30

Name:_____
Address:_____

Dear Mr. _____:

This is advance notice that the Agency for International Development proposes to remove you from your position of _____ because of your inability to meet the medical standards for retention in the AID Foreign Service.

The basis for this proposal is the report dated _____ from the Medical Division, Department of State, in which you were found disqualified for overseas duty for medical reasons. If you have any questions concerning this report, please call my office to arrange an interview with the Medical Division, Department of State.

This letter constitutes formal notice of intent to separate you pursuant to procedures set forth in HB 30, Ch. 8. You are advised that your separation is only a proposal at this stage, and that once all of the procedural requirements set forth in Ch. 8 have been met, you will be given notice of the Agency's final decision in your case. (The decision includes the effective date, which will be no earlier than _____ days from the date you received this Notice of Intent. Insert "30" or "60," depending on whether the employee has reemployment rights.)

During the notice period you will remain in active duty status in your current position. (If employee's status is otherwise during notice period, explain precisely what his status is to be.)

You may reply to this letter in writing or orally, or both, stating any reasons as to why this proposed action should not be taken. You may also submit affidavits or medical opinion in support of your reply. A written reply should be addressed to this office and delivered no later than ____ (date) ____. If you choose to reply orally, call this office for an appointment. Any reply you make will be given full consideration before separation proceedings are continued. You will be informed in writing within five calendar days after receipt of your reply of its effect on the proposal to separate you from the foreign service, or, if you do not reply by the date specified above, of the next step on the proceedings.

Should separation proceedings be continued, you are entitled to a hearing, pursuant to HB 30, Ch. 8, and such hearing will be scheduled unless you choose to waive, in writing, this right.

If you require clarification or additional information regarding any of the above statements, other than the medical findings, please call upon (name, title, office location).

Sincerely yours,

_____
Title

ATTACHMENT 8E

SAMPLE - NOTICE OF DECISION: SEPARATION FOR DISABILITY

Name:_____
Address:_____

Dear Mr._____:

By letter of (date) you were informed of a proposal to remove you from position of (title of position).

The Agency has given full consideration to the information contained in your letter of (date) as well as to your oral presentation of (date). I have concluded that the charges stated in the Letter of Intent to separate you, dated _____, in which you are unable to meet minimum medical standards for retention in the Foreign Service are valid. Accordingly, you will be separated from the Service effective no earlier than (date).

(If employee is entitled to veteran's preference and has completed at least one year of continuous employment in the appointment from which he is being removed, add the following:)

You have a right to appeal this action. If you choose to appeal to that office your appeal must be in writing and must include:

a. Your full name, mailing address and signature.
b. The grade, title and location of your position.
c. The nature and effective date of the action.
d. The dates of all notices furnished you by the Agency.
e. Your reasons for believing the removal action is improper with such offer of proof and documents as you are able to submit.

An appeal in order to be considered must be submitted no later than 15 days after the effective date of your removal.

(Add if appropriate:) Our records indicate that you have reemployment rights in (name of agency). If you wish to exercise these rights, you must apply directly to that Agency for reemployment within 30 days from the effective date of your separation from AID rolls. Otherwise, you will forfeit such rights.

(Insert paragraph regarding travel, transportation of effects, storage, taking of leave in excess of, housing, etc.)

If you require clarification or additional information regarding the content of this notice, please call upon (name, title, office location).

Sincerely yours,

_____
Administrator

ATTACHMENT 8F

EMPLOYEE'S REQUEST FOR LEAVE WITHOUT PAY

☐ I request that the date of my involuntary separation be extended _____ calendar days. Please place me on leave without pay during this period for the following reason:

☐ No LWOP desired.

Point(s) of contact during absence from official duty station:

INCLUSIVE DATES	NAMES	ADDRESS(ES)	TELEPHONE NUMBER

_____ Employee's Name *(Print or Type)*

_____ Title

_____ Signature

_____ Date

AID 4-243 (12-78) back

ATTACHMENT 8G

Agency for International Development
Washington, D.C. 20523

NOTICE OF PROPOSAL TO FURLOUGH FOREIGN SERVICE EMPLOYEES

Considering the budget crisis the Agency currently faces, it now appears likely that AID will enter Fiscal Year 1991, which begins October 1, 1990, under a Gramm-Rudman-Hollings sequester. Therefore, I truly regret the necessity of having to notify you that the Agency for International Development proposes to furlough you no earlier than 30 days from receipt of the notice.

The furlough is being proposed under the Administrator's authority to manage the Agency and Foreign Service contained in the Foreign Assistance Act and the Foreign Service Act of 1980. The agency is due to go under a sequestration order pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) (commonly known as the Gramm-Rudman-Hollings Act), as amended. The initial sequester order to be signed on August 25, 1990, results in a level of funding significantly less than the current level for the period of October 1 through October 15, 1990. A final sequester order on October 15 or an appropriation could also result in funding reductions beyond October 15. Accordingly, maintaining the present rate of spending will result in an expenditure of funds in excess of the agency's authorized budget. Although many actions are being taken within the agency to curtail spending and minimize the duration of the furlough, this furlough action has been, proposed to promote the efficiency of the service by avoiding a deficit of funds in FY 1991.

We plan to apply the following procedures and conditions related to the furlough:

1. The furlough will be on discontinuous (intermittent) days, beginning October 1. Full time employees will be furloughed no more than 22 workdays or 176 hours. If you are a part-time employee, your furlough will be prorated, based on your work schedule.

2. Due to the uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, if the decision is made to furlough, you will be advised in advance of the number of furlough hours required to allow this agency to meet its financial obligations.

3. You may request a specific schedule for furlough time subject to management approval based upon mission and workload considerations.

4. Annual, sick, court, or military leave which has been approved for a day which is designated as a furlough day will be cancelled. However, when you receive the notice of your furlough dates, you may request that the furlough time be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

At this time, we do not reasonably anticipate the need for furlough beyond 22 workdays. However, should additional furlough days be necessary, employees will be given another notice. We recognize the difficult personal financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available.

You will be allowed ten calendar days from receipt of this letter to respond orally and/or in writing, to review the supporting material, and to furnish any affidavits or other supporting documentary evidence in your answer. You have the right to be represented in this matter by an attorney or other person you may choose. If you are a member of a bargaining unit, you may contact your union representative. If you are in active duty status, you an/or your representative, if an agency employee, will be allowed up to four hours of official time to review the supporting material, seek assistance, prepare your reply, secure affidavits and statements, consider appropriate courses of action, and make a response. Contact your supervisor to arrange for official time. The deciding official has designated representatives to hear oral replies on his behalf, and to comment and make recommendations on your oral reply before the final decision. To arrange for an oral reply or review the supporting materials, please contact your Mission Director, or designee, or Bob Egge, PM/OD (202) 663-1315

Your written reply should be mailed to the deciding official, Mr. Anthony Cauterucci, Director of Personnel Management, Agency for International Development, Washington, D.C. 20523, Room 1418, SA-1.

A final written decision, including an explanation of the specific reasons for the action taken, will be given to you as soon as possible after the 10 days allowed for your reply. No decision to furlough you has been made or will be made until full consideration is given to your reply.

You will remain in a duty and pay status, pending the final decision and any further notice.

A fact sheet on furloughs will follow shortly, which will answer many of your questions. If you have further questions, contact Lee Borcik on extension 663-1493.

Betty Lind, Associate Director
Foreign Service Personnel

August 27, 1990

ATTACHMENT 8H

Agency for International Development
Washington, D.C. 20523

MEMORANDUM

TO: All A.I.D./W Foreign Service Employees

FROM: PM/OD, Lois E. Hartman, Acting

SUBJECT: Notice of Decision to Furlough

By written notice, dated August 27, 1990, you were notified of a proposal to furlough you pursuant to the Administrator's authority to manage the Agency and the Foreign Service contained in the Foreign Assistance Act and the Foreign Service Act of 1980.

I have carefully reviewed and considered all written and oral replies received in response to that notice. I understand the great financial burden a furlough will place on individuals and the impact it may have on Agency operations, particularly overseas. However, I have determined that the reasons for the proposed furlough, as stated in the notice of proposal, remain valid. Current estimates are that the Federal budget deficit in Fiscal Year 1991 will substantially exceed the amounts allowed by the Gramm-Rudman-Hollings (G-R-H) Act. That Act requires action to bring the deficit to allowable levels.

The Administration and the Congress have entered into budget negotiations to reduce the deficit. Even if a general agreement is reached, specific legislation must be enacted to prevent the reduction, or "sequester," in G-R-H terms. Such legislation may not be enacted by October 1. Thus, under the G-R-H law, the initial sequester will remain in effect until legislation is enacted to rescind it.

The Office of Management and Budget has indicated that the initial sequester will require a 32.4 percent reduction to take effect on October 1, the beginning of Fiscal Year 1991, for all non-Defense agencies. This will require budget reductions across-the-board to achieve the deficit levels allowed by G-R-H. Even without sequestration, a significantly reduced appropriation would still result in the need to achieve significant savings to meet the lower funding level.

Therefore, at this time, it is my decision that you will be on a discontinuous furlough to begin no earlier than October 12, 1990. I have determined that this action will promote the efficiency of the service by maintaining the Agency's expenditure of funds within the limits imposed by G-R-H.

The following procedures and conditions apply to the furlough:

1. The period of the furlough may extend up to 22 workdays (or 176 hours).

2. Due to the uncertain and potentially fluctuating amount of funding that may be available to the Agency, the number of hours per pay period required for the furlough may vary. Accordingly, you will be advised in advance of the number of furlough hours required to allow the Agency to meet its financial obligations.

3. Annual, sick or court leave which has been approved for a day designated as a furlough day will be cancelled.

When you are on furlough, you will be in a nonpay, nonduty status. During the furlough, <u>you will not be permitted to volunteer your services to the Agency</u>, and must remain away from your workplace. Violation of this prohibition may result in disciplinary action including suspension and removal from office.

At this time, we do not reasonably anticipate the need to furlough beyond 22 workdays. However, should additional furlough days be necessary, you will be given another notice.

You have the right to grieve this decision under the Foreign Service Grievance System (3 FAM 660). You have the right to be represented in this matter by an attorney or other person of your choice. Your grievance should be submitted to:

Mr. Anthony J. Cauterucci
Director, Office of Personnel Management
2401 E Street, N.W., Room 1418
Washington, D.C. 20523

For your information, a Notice to Federal Employees About Unemployment Insurance (SF-8) is attached to this decision. You should take it with you if you file a claim for unemployment compensation.

If legislation is passed which makes this furlough unnecessary, you will be notified as soon as possible.

Please acknowledge receipt of this memorandum by completing the attached acknowledgment of receipt form.

Attachments

Acknowledgment Form
SF-8

CHAPTER 9

REDUCTION IN FORCE IN THE SENIOR EXECUTIVE SERVICE

9A. Purpose

This Chapter establishes policies and procedures for conducting a reduction in force (RIF) among career members of the Senior Executive Service (SES) in the Agency for International Development (USAID).

9B. Authorities

5 USC 3595
5 CFR Part 359
FPM Supplement 920-1

9C. Policy

If a RIF becomes necessary, appointees in surplus SES positions and displaced SES appointees will be informed at the earliest possible time and advised of the regulations under which the RIF action is being taken and of their rights and benefits. All members will be accorded fair and equitable treatment, consistent with governing regulations and Agency procedures.

When SES positions occupied by career executives are modified (such that they are no longer SES qualifying) or abolished, the executive will be reassigned to a vacant SES position for which qualified in the Agency. If there are no vacancies, RIF procedures are applied. The law imposes a 120-day restriction on involuntary reassignment of career SES members following the appointment of a new head of the Agency or non-career supervisor. The restriction in law is intended to allow new Agency management time to become familiar with the capabilities of career executives before taking action particular to an individual. However, the 120-day moratorium does not apply when a bona fide RIF situation exists resulting in a lack of work or shortage of funds, and not for reasons personal to the individual. Even though RIF situations are not directly related to the individual SES member, the 120-day restriction needs to be observed. Therefore, the Agency in a RIF situation will not involuntarily reassign a career executive during the 120-day restriction period. The following are certain options which the Agency may adopt in such instances:

-- Offer reassignment and effect it during the 120-day period if it is voluntarily accepted;

-- Issue a notice that would result in an involuntary reassignment, to be effected when the 120-day period is over or,

-- Involuntarily reassign a career member of the SES during the 120-day period if failure to do so would violate law (e.g., funding for the

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function where the member is located has terminated and continuing the individual in the position would violate regulatory requirements).

9D. Exclusions

Non-career appointees, limited-term appointees, and limited-emergency appointees are placed on a separate list apart from the retention register and are excluded from competitive RIF procedures. The Agency may remove these employees at any time and in any order. The Agency will give the employee written notice prior to the effective date of removal. Actions taken against these employees are not appealable to the Merit Systems Protection Board (MSPB).

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9E. Definitions

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1. Reduction in Force (RIF)

The release of a career or probationary appointee from a position in the SES because the appointee has been displaced by a career or probationary appointee in a surplus position who has a higher retention standing, or the release of a career or probationary appointee from a surplus position in the SES when such appointee has the lowest retention standing of those occupying SES positions for which he or she is qualified.

2. Abolished Position

An SES position which is surplus to the needs of the Agency due to any of the following reasons:

-- Lack of work or curtailment of a function;

-- Shortage of funds;

-- Reorganization;

-- Determination that the appointee's position no longer meets the definition for inclusion in the SES because of a change in duties or responsibilities; or,

-- Another action which results in the elimination or modification of an SES position.

3. Career Appointee

A career member of the SES who has completed, or was not subject to, a one-year probationary period.

4. Probationary Appointee

A career member of the SES who is subject to, but who has not

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completed, a one-year probationary period.

5. Competitive Area

The organizational and geographical area within which career and probationary appointees compete for job retention.

6. Competitive Level

All positions in the competitive area that are sufficiently alike in qualifications, requirements, duties, and responsibilities that the incumbent of one2 position should be considered able to perform the duties of another position in the competitive level with minimal interruption to the work of the Agency.

7. Performance Ratings

The final (annual) rating of record given under an SES performance appraisal system as reviewed by the Agency Performance Review Board and approved by the Administrator. SES appointees who for any reason do not have an annual performance rating of record will be assigned a presumptive rating of Fully Successful.

8. Directed Reassignment

A management decision of the Administrator to reassign a career or probat2ionary appointee to another SES position for which qualified.

9F. Responsibilities

1. The Administrator or the Administrator's Designee:

-- Approves the need for a RIF in the SES;

-- Approves placement offers or separation actions for affected SES members;

-- Ensures that RIFs in the SES are based on concepts of efficiency and effective mission support; and,

-- Makes certain that RIFs are carried out in accordance with governing regulations and Agency policies and procedures.

2. Assistant Administrators and Heads of Independent Offices:

-- Identify which SES positions are affected because of program curtailments, reduction in monetary or manpower allocations, or any other causes which will result in a reduction in the size of their SES workforce, and initiate appropriate action as described in the following procedures;

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-- Recommend placement actions within their organizations for affected SES appointees; and,

-- Provide requests for personnel action and appropriate data in support of RIF actions affecting subordinate SES appointees.

3. Director, Office of Human Resources Development and Management (FA/HRDM):

-- Develops, promulgates, and implements Agency procedures for implementing RIF in the SES and related personnel management functions, consistent with appropriate law and U.S. Office of Personnel Management (OPM) regulations;

-- Maintains liaison with OPM on RIF policy and placement offers for affected employees; and,

-- Reviews plans to conduct a RIF in the SES, provides staff advice and recommendations, and provides technical support for program implementation.

9G. Procedures

1. Scope of Competition

The competitive area includes all SES positions in the Agency, except those positions in the Office of the Inspector General which are in a separate competitive area. SES employees compete for retention in the competitive area by competitive level.

2. Implementation of a Formal RIF

Career and probationary appointees who occupy surplus positions and who have not been placed by directed reassignment into vacant SES positions will be subject to a formal RIF, conducted on the basis of retention competition. FA/HRDM will prepare a retention register and provide staff support for the formal implementation process.

-- Retention Registers. Career and probationary appointees who occupy positions that have been scheduled for abolishment are entitled to compete for job retention. A list, called a retention register, will be compiled of the incumbents of all SES positions in the same competitive level as the affected employee(s). Incumbents of positions in each competitive level will be listed on the retention register in accordance with the point system set forth below.

-- Retention Standing. A career appointee's relative standing on the retention register will be determined by assigning points to the following factors, with performance given primary consideration. Only final (annual) ratings of record received under an SES performance appraisal system are used. Probationary and career appointees who do

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not have an SES rating of record will be given a presumptive rating of Fully Successful.

-- Credit 15 points for receipt of each Distinguished Executive rank award within the past five rating cycles;

-- Credit 10 points for receipt of each Meritorious Executive rank award within the past five rating cycles;

-- Credit 5 points for the receipt of each bonus within the past five rating cycles;

-- Credit 10 points for each performance rating of outstanding during the past five rating cycles;

-- Credit 5 points for each rating of exceeds fully successful during the past five rating cycles; and

-- Credit 10 points for having served five or more years in the career SES.

3. Displacement and Consequences of Competition

If there are appointees occupying positions for which the surplus appointee is qualified and who are in a lower retention standing on the retention register, as determined through the competitive process described above, the appointee of the position scheduled for abolishment will displace the appointee with the lowest retention standing.

If there are no appointees with lower retention standing on the retention register, no displacement is possible and the employee is entitled to assignment rights as discussed below.

When employees are tied for release from a retention register, the * Agency may select any of the tied appointees for release, except that an appointee who has completed the probationary period must be retained over an appointee who has not completed the probationary period if both have the same retention standing. *

9H. Assignment Rights

1. Career SES Appointees Who Have Completed Probation

SES career appointees who cannot displace other appointees on their retention register through the formal RIF process are entitled to be placed in a vacant SES position for which they qualify within USAID or within another agency through the OPM RIF placement assistance program. If no SES position is found, the displaced appointee is entitled to be placed in a continuing General Schedule position.

-- USAID Certification. If USAID is unable to place a RIFed

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career appointee in a vacant SES position for which qualified, certification of this must be made in writing to OPM under the signature of the Administrator, with a copy to the affected appointee.

* -- OPM Placement Offer. OPM has 45 calendar days from the date OPM acknowledges receipt of the Agency certification to locate and offer the RIFed career appointee an SES vacancy for which qualified. RIFed career appointees remain on the Agency rolls in an SES pay status during this process. *

-- Placement in the GS Personnel System. When OPM is unable to effect placement to a vacant SES position, the affected SES appointee is entitled to be placed in a continuing civil service position that will last at least three months at grade GS-15 of the General Schedule, or equivalent, in any agency, even if USAID must create a position for the affected appointee. The tenure of the appointment must be equivalent to the tenure of the appointment held by the affected appointee at the time of entry into the SES. If the RIFed career appointee does not have reinstatement rights in the competitive service, the Agency may use the Schedule B authority under 5 CFR 213.3202(m) or other excepted appointment authority. Placement may not be made to a position which causes the separation or reduction in grade of any other employee. The career appointee so placed is entitled to receive basic pay at the highest of the following rates of basic pay:

The rate of basic pay in effect for the General Schedule position in which placed;

The rate of basic pay in effect at the time of the placement for the civil service position held immediately before being appointed to the SES; or

The rate of basic pay in effect for the career appointee immediately before being placed in the General Schedule position upon separation from the SES.

2. SES Probationary Employees

SES probationary appointees who are RIFed from their position are not entitled to the placement consideration from OPM that non-probationary career appointees receive. They may be placed in any vacant SES position for which they qualify within A.I.D, if there is no non-probationary career appointee affected by the RIF who is entitled to the position.

-- SES Probationary appointees who, as of the effective date of their RIF, are still serving probation, and who were appointed to the SES from a civil service position held under a career or career-conditional, or equivalent tenure, appointment, are entitled to be placed in a continuing civil service position that will last at least three months at grade GS-15 of the General Schedule, or equivalent, in

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any agency, even if USAID must create a position for the affected appointee. Placement may not be made to a position which causes the separation or reduction in grade of any other employee. The probationary employee so placed is entitled to receive basic pay at the highest of the following rates of basic pay:

The rate of basic pay in effect for the General Schedule position in which placed;

The rate of basic pay in effect at the time of the placement for the civil service position held immediately before being appointed to the SES; or,

The rate of basic pay in effect for the probationary appointee immediately before being placed in the General Schedule position upon separation from the SES.

-- Probationary SES appointees who, as of the effective date of their RIF action, are still serving probation, but who did not hold a career or career-conditional, or equivalent tenure, appointment prior to the SES appointment, are not entitled to a position at GS-15 of the General Schedule, or equivalent. Probationary SES appointees not entitled to guaranteed placement are separated from the federal service.

9I. Separation

1. Career Appointees

Career appointees are considered involuntarily separated from the Agency rolls and entitled to discontinued service annuity (provided they meet the eligibility requirements of Part 831, Title 5, CFR) when:

-- They decline a reasonable OPM offer of another SES position somewhere in the federal government;

-- They are not placed by OPM in an SES position in another agency within 45 days from the date the Agency's certification as acknowledged by OPM; or,

-- They retire upon receiving a specific notice that their position will be abolished and that they face involuntary separation from such position.

A career employee who declines a directed reassignment to another SES position in the Agency within the employee's commuting area is not eligible for discontinued service annuity.

2. Probationary Appointees

Probationary appointees are considered involuntarily separated from Agency rolls and entitled to discontinued service annuity (provided

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they meet the eligibility requirements of Part 831, Title 5, CFR) when:

-- They decline an offer of a continuing GS-15 position upon separation from the SES; or,

-- They retire upon receiving a specific notice that their position will be abolished and that they face involuntary separation from such position.

3. Career or Probationary Appointees who are not eligible for discontinued service annuity are eligible for severance pay provided they meet the eligibility requirements of Part 550, Title 5, CFR, and provided the employee has not refused a directed reassignment or declined an offer of a reassignment to another SES position in the Agency within the employee's commuting area. *

4. Re-employed Annuitants may be removed at any time from their SES position. However, if they are not removed prior to a RIF, they become part of the formal RIF procedures.

9J. Notice Requirements for RIF-Related Actions

1. Removal of Non-Career, Limited Appointees and Re-employed Annuitants

A written notice of termination of appointment, due to the position of the appointee becoming surplus, will be issued to the appointee as soon as feasible in advance of the effective date of the action.

2. Removal of Probationary Appointees

Probationary appointees will receive written notification of their separation from the SES, removal from the Agency, or offer of a GS-15 position, as appropriate, 30 calendar days in advance of the effective date of the action to be taken, where feasible.

3. Removal of Career Appointees

A career appointee who is removed from their SES position by a RIF and who cannot be placed in another SES position in the Agency will be given a written notice in advance of Agency certification to OPM. The notice will specify:

-- The appointee's retention standing;

-- Why the action is being taken;

-- How placement of the appointee in another SES position within the Agency was attempted;

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-- Reinstatement eligibility for federal employment;

-- Any placement rights following separation from the SES;

-- The OPM offer process;

-- The place where the appointee may inspect the regulations and records pertinent to the action;

-- The name and telephone number of the personnel specialist who is available to provide counseling concerning the rights of the appointee;

-- The appointee's appeal rights, including the time limit for the appeal, the location of the MSPB office to which any appeal should be sent, and a copy of the applicable MSPB regulations and an appeals form; and,

-- The date of separation if no offer is made by OPM or if such reasonable offer is not accepted.

4. Directed Reassignment

Career and probationary appointees are entitled to 15 calendar days advance written notice of a directed reassignment.

5. Removal for Failure to Accept a Directed Reassignment

Career appointees and probationary appointees who were appointed from a civil service career, career-conditional, or equivalent tenure appointment, who are removed for failure to accept a directed reassignment, are entitled to 30 calendar days written notice in advance of the effective date of such removal. The Agency must follow procedures governing separation for cause contained in Part 752, Title 5, CFR.

9K. Appeal Rights to MSPB

1. Career and Probationary Appointees are entitled to appeal whether or not the RIF complies with competitive procedures established by the Agency.

2. Non-Career and Limited Appointees have no right of appeal for separation from the SES or the Agency prior to or during a RIF.

9L. Records

The Agency will maintain current records needed to determine the retention standing of its SES appointees. The Agency will allow the inspection of its retention registers and related records by an appointee to the extent that they have a bearing on the appointee's

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situation. The Agency will preserve intact all registers and records relating to a reduction-in-force action for at least two years from the effective date of the action.

CHAPTER 9

REDUCTION IN FORCE - SENIOR EXECUTIVE SERVICE

A. Purpose

To establish the procedures for conducting a Reduction in Force (RIF) among career employees of the Senior Executive Service (SES) in the International Development Cooperation Agency (IDCA) including its component agencies, the Agency for International Development (A.I.D.), and the Trade and Development Program (TDP).

B. Authorities

5 U.S.C. 3591-3596

C. Policy

1. If a RIF becomes necessary, appointees in surplus positions and displaced appointees shall be informed at the earliest possible time and advised of the regulations under which the RIF action is being taken and of their rights and benefits. All executive shall be accorded fair and equitable treatment, consistent with governing regulations and Agency procedures.

2. When SES positions occupied by career executives are modified (such that they no longer are SES qualifying) or abolished, the executive shall be reassigned to a vacant SES position for which qualified in the Agency. If there are no vacancies, RIF procedures shall be used. The law imposes a 120-day restriction on involuntary reassignment of career SES employees following the appointment of a new head of the Agency or non-career supervisor. The restriction in law was intended to allow new Agency management time to become familiar with the capabilities of career executives before taking action particular to an individual. Even though RIF situations are not directly related to the individual SES employee, the 120-day restriction needs to be complied with to the extent possible. Therefore, as a general rule, the Agency in a RIF situation will not involuntarily reassign a career executive during the 120-day restriction period. There are certain options which the Agency will adopt in such cases.

a. Offer a reassignment and effect it during the period if it is voluntarily accepted;

b. Issue a notice that would result in an involuntary reassignment, to be effective when the 120-day period is over; or

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c. Involuntarily reassign a career appointee during the period if failure to do so would violate a law, e.g., funding for the function where the appointee is located has terminated and continuing the person in the position would violate regulatory requirements.

D. Exclusions

1. Non-career appointees, limited term appointees and limited emergency appointees are excluded from competitive procedures. The following apply:

a. the Agency may remove an appointee as listed above at any time and in any order;

b. the Agency shall notify the appointee in writing prior to effective date removal;

c. actions taken against these employees are not appealable to the Merit Systems Protection Board.

2. These procedures do not apply to a former career appointee who elected to retain SES pay and benefits while serving under a Presidential appointment with the advice and consent of the Senate.

E. Definitions

1. The Agency. For purposes of these regulations, IDCA, A.I.D. and TDP shall be collectively defined as the Agency.

2. The Administrator. The Administrator of A.I.D. also serves as Acting Director, IDCA. For purposes of these regulations, reference to the Adminstrator includes authority of the Director, IDCA.

3. Reduction in Force. The release of a career or probationary appointee from a SES position because the appointee has been displaced by a career or probationary appointee in a surplus position who has a higher retention standing, or the release of a career or probationary appointee from a surplus SES position when such appointee has the lowest retention standing of those occupying SES positions for which he or she is qualified.

4. Abolished Position. An SES position becomes surplus to the needs of an organization and is abolished due to any of the following reasons:

a. lack of work or curtailment of a function;

E4

b. shortage of funds;

c. reorganization;

d. determination that the appointee's position no longer meets the definition for an SES position because of a change in duties or responsibilities; or

e. other action which results in the elimination or modification of one or more SES positions.

5. Senior Executive Service Position. Any Agency position classifiable at a level equivalent to GS-16, 17 or 18 of the General Schedule or level IV or V of the Executive Schedule, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate and in which an employee:

a. directs the work of an organizational unit;

b. is held accountable for the success of one or more specific programs or projects;

c. monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;

d. supervises the work of employees other than personal assistants; or

e. Otherwise exercises important policy-making, policy-determining or other executive functions.

6. Career Appointee. A career employee of the SES who has completed or was not subject to a one-year probationary period.

7. Probationary Appointee. A career employee of the SES who has not completed the one-year probationary period.

8. Competitive Area. The organizational and geographical area within which career and probationary appointees compete for job retention.

9. Competitive Level. All positions in the competitive area that are alike in qualifications, requirements, duties and responsibilities.

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10. Performance Rating. The most recent official SES performance rating as reviewed by the Agency's Performance Review Board and approved by the Administrator. Executives who for any reason do not have annual performance rating will be assigned a presumptive rating of Fully Satisfactory.

11. Directed Assignment. A management decision by the Administrator to reassign a career or probationary appointee to another SES position for which qualified.

F. Responsibilities

1. The Administrator, or designee

a. Approves the need for a RIF in the SES.

b. Approves placement offers or separation actions for affected SES employees.

c. Ensures that RIFs in the SES are based on concepts of efficiency and effective mission support, and are carried out in accordance with governing regulations and Agency policies and procedures.

2. Assistant Administrators and Office Heads

a. Identify which SES positions are affected because of program curtailments, reduction in monetary or manpower allocations, or any other causes which will result in a reduction in the size of the SES work force; and initiate appropriate action as described under G.1. and G.2.

b. Recommend placement actions within their organizations for affected SES employees.

c. Provide requests for personnel action and appropriate data in support of RIF actions affecting subordinate SES employees.

3. Director, Office of Personnel Management, PFM/PM/OD

a. Develops, promulgates and implements Agency procedures for implementing a RIF in the SES and related personnel functions.

b. Maintains liaison with the U.S. Office of Management and Budget on RIF policy and placement offers for affected employees.

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c. Reviews plans to conduct a RIF in the SES, provides staff advice and recommendations, and provides technical support for program implementation.

G. Procedures

1. Scope of Competition. The competitive area includes all SES positions in the Agency except those positions in the Office of the Inspector General, which are in a separate competitive area. Executives compete for retention in the competitive area by competitive levels.

2. Implementation of a Formal RIF. Career and probationary executives who occupy surplus positions and who have not been placed by directed reassignment into vacant SES positions will be subject to a formal RIF, conducted on the basis of retention competition. The Agency's Office of Personnel Management will prepare a retention register and provide staff support for the formal implementation process.

a. Retention Registers. Career and probationary executives who occupy positions that have been scheduled for abolishment are entitled to compete for job retention. A list, called a retention register, will be compiled of the incumbents of all SES positions in the same competitive level as the executive(s). These executives, along with the incumbents of the positions identified to be abolished, will be listed on the retention register in accordance with the retention groups and subgroups defined under paragraph 2.c. below. All listed executives will be advised of their retention group and subgroup on the register.

b. Retention Standing. Executives on the retention register are listed by performance groups and subgroups. A career executive's relative standing within a subgroup will be determined as indicated in paragraph 2.d. Career executives who have not completed the probationary period are not credited with additional points.

c. Performance Groups. In an SES RIF, performance is given primary consideration. Performance groups and subgroups are as follows:

Group I All career and probationary appointees with current Outstanding performance ratings.

Subgroup IA Career appointees with current Outstanding ratings.

G2c

Subgroup IB Probationary appointees with current Outstanding ratings.

Group II All career and probationary appointees with current Satisfactory ratings.

Subgroup IIA Career appointees with current Satisfactory ratings.

Subgroup IIB Probationary appointees with current Satisfactory ratings.

Group III All executives with Minimally Satisfactory or Unsatisfactory performance ratings. Within these subgroups, Unsatisfactory will be placed below Minimally Satisfactory.

Subgroup IIIA Career executives.

Subgroup IIIB Probationary executives.

d. Additional Points. A career executive's relative standing on the retention register within a subgroup will be determined by assigning points in the following manner (career executives may receive points for only one of the above criteria and that will be whichever gives the executive the greater benefit):

--Credit 30 points for the award of a Distinguished Executive rank within the past rating cycle.

--Credit 20 points for the award of a Meritorious Executive rank within the past rating cycle.

--Credit 15 points for the award of a bonus within the past rating cycle.

--Credit 10 points for the nomination of a Meritorious or Distinguished Executive rank award within the past rating cycle.

e. When executives in the same performance group are tied for release, the Agency may select any of the tied executives for release.

3. Displacement and Consequences of Competition. If there are executives occupying positions for which the surplus executive is qualified and who are in a lower retention subgroup as determined through the competitive process described under paragraph G.2.a. to 2.e., the executive of the position scheduled for abolishment will displace the position of the executive with the lowest retention standing.

G3

a. If there are no executives with lower retention standings in any position for which executive qualifies, there is no displacement and the executive is entitled to assignment rights under paragraph H.1. and H.2.

b. When executives are tied for release from a retention register a selection for release may be made from any of the tied executives.

H. Assignment Rights

1. Career SES Executives

a. SES career executives who cannot displace other executives through the formal RIF process are entitled to be placed in a vacant SES position for which they qualify within A.I.D. or another agency.

b. RIFed SES executives who have completed probationary periods or who are not subject to probation are not entitled to be considered for GS-15 or higher positions even though they formerly may have held career or career conditional appointments. Such executives are entitled to reemployment rights as outlined in paragraph J.

c. A.I.D. Certification. If A.I.D. is unable to place a RIFed career appointee in a vacant SES position for which he/she is qualified, certification of this fact must be made in writing to the U.S. Office of Personnel Management (OPM) under the signature of the Administrator with a copy to the affected executive.

d. OPM Placement Offer. OPM has 120 calendar days from the date of Agency certification to locate and offer the RIFed career executive an SES vacancy for which he/she qualifies. RIFed career executives remain on the Agency's rolls in the SES during this process.

e. OPM Certification to Congress and Congressional Review. An employee who was a career executive on May 31, 1981, may be removed from the SES and the Civil Service due to a RIF after the 120-day period specified above only if the Director, U.S. Office of Personnel, certifies to the House Committee on Post Office and Civil Service and the Senate Committee on Governmental Affairs no later than 30 days prior to the effective date of such removal, that:

H1e

(1) the Agency has taken all reasonable steps to place the career executive in accordance with this subsection; and

(2) due to the highly specialized skills and experience of the career appointee, the Agency has been unable to place the career executive.

2. SES Probationary Executives

a. SES probationary executives who are RIFed from their positions are not entitled to the placement consideration career executives receive in H.1. a.-e. although the Agency may at its option offer a vacant SES position to the RIFed probationary executive.

b. SES probationary executives who as of the date RIFed are still serving probation and were appointed to the SES from a Civil Service position held under a career or career conditional or equivalent tenure appointment are entitled to be placed in a continuing Civil Service position at grade GS-15 or above of the General Schedule in any agency as long as such placement would not cause the separation or reduction in grade of any other employee. The Agency will make every effort to place the employee in a vacancy in the Agency. The probationary executive so placed is entitled to receive basic pay at the highest of the following rates of basic pay:

--the rate of basic pay in effect for the General Schedule position in which placed;

--the rate of basic pay in effect at the time of the placement for the Civil Service position held immediately before being appointed to the SES; or

--the rate of basic pay in effect for the probationary executive immediately before being placed in the General Schedule position upon separation from the SES.

c. SES probationary executives who as of the date of the RIF are still serving probation but did not hold a career-conditional appointment or an appointment of equivalent tenure prior to the SES appointment are not entitled to a GS-15 or above position in the General Schedule.

I. Separation

1. Career Executives are considered involuntarily separated from Agency rolls and entitled to discontinued service annuities (provided they meet the eligibility requirements of 5 CFR 831) when:

I1

a. they decline a reasonable offer of another SES position somewhere in the federal government made by OPM; or

b. whichever of the following that applies, occurs:

(1) they are not placed by OPM in an SES position in another agency within 120 days after OPM received written certification that the Agency could not place them; or

(2) 30 days has elapsed after OPM notified Congress that placement was not possible in the case of any appointee who had a career appointment as of May 31, 1981; or

c. they retire upon receiving a specific notice that their position will be abolished and that they face involuntary separation from such position.

d. A career employee who declines a directed reassignment within the Agency is not eligible for discontinued services annuities.

2. Probationary Executives are considered involuntarily separated from Agency rolls and entitled to discontinued service annuities (provided they meet the eligibility requirements of 5 CFR 831) when:

a. they decline an offer of a continuing GS-15 position in the Agency upon separation from the SES; or

b. they retire upon receiving a specific notice that their position will be abolished and that they face involuntary separation from such position.

3. Career or Probationary Executives who are not eligible for discontinued service annuities are eligible for severance pay provided they meet the eligibility requirements of 5 CFR 500 and provided the employee has not refused a directed reassignment or has not declined an offer of a reassignment within the Agency.

4. Reemployed Annuitants may be removed at anytime from the SES position. However, if they are not removed prior to the RIF, they become part of the formal RIF procedures.

J. Reemployment Entitlement

SES employees who were career appointees on May 31, 1981, who could not be placed by the Agency or OPM are entitled to be selected for the first announced vacancy in the Agency for which they apply and are found qualified. This entitlement is for one year, beginning with the date of Agency certification to OPM and ending with either their first such SES offer by the Agency or the anniversary of the date of certification to OPM, whichever is earlier.

K. Notice

1. Removal of Non-career, Limited Executives and Reemployed Annuitants.

Written notice of termination of appointment because the position the appointee occupies has become surplus will be issued to the appointee as soon as feasible in advance of the effective date of the action.

2. Removal of Probationary Executives. Probationary executives will receive written notification of their separation from the SES, removal from the Agency, or offer of a GS-15 position, as appropriate, in accordance with H2a-c, 30 calendar days in advance of the effective date of the action to be taken, where feasible.

3. Directed Reassignment. Career and probationary executives are entitled to 15 calendar days advance written notice of a directed reassignment.

4. Removal for Failure to Accept a Directed Reassignment. Career and probationary executives who were appointed from a Civil Service career, career-conditional or equivalent tenure appointment, who are removed for failure to accept a directed reassignment are entitled to 30 calendar days written notice in advance of the effective date of such removal. The Agency must follow procedures governing separation for cause contained in 5 CFR 752.401.

5. Removal of Career Executives. A career executive removed from his/her SES position by a RIF and who cannot be placed in another SES position in the Agency will be given a written notice in advance of Agency certification to OPM. The notice will specify:

a. the appointee's retention standing;

b. why the action is being taken;

c. how placement of the executive in another SES position within the Agency was attempted;

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d. reinstatement eligibility for federal employment;

e. any placement rights following separation from the SES;

f. the OPM offer process;

g. the place where the executive may inspect the regulations and records pertinent to the action;

h. the name and telephone number of the personnel specialist available to provide counseling concerning the executive's rights;

i. the executive's appeal rights, including the time limit for the appeal, the location of the Merit Systems Protection Board (MSPH) office to which any appeal should be sent, and a copy of the applicable MSPB regulations and an appeals form; and

j. the date of separation if no offer is made by OPM or if such reasonable offer is not accepted.

L. Appeal Right to MSPB

1. All Career Executives are entitled to appeal:

a. whether or not the RIF complies with competitive procedures established by the Agency;

b. removal for failure to accept a reasonable offer in another agency;

c. whether or not OPM took all appropriate steps to achieve placement as required by law;

d. removal for failure to accept a directed reassignment.

2. Noncareer and Limited Executives have no right of appeal for separation from the SES or the Agency prior to or during a RIF.

3. Probationary Executives are entitled to appeal:

a. whether or not the RIF complies with competitive procedures established by the Agency;

b. removal for failure to accept a directed reassignment.

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4. Executive who have reemployment entitlement under J. are entitled to appeal nonselection for reinstatement.

M. Records

The Agency shall maintain current records needed to determine the retention standing of its SES employees. The Agency shall allow the inspection of its retention registers and related records by an executive to the extent that they have a bearing on the executive's situation. The Agency shall preserve intact all registers and records relating to a RIF action for at least two years from the effective date of the action.

POLICY

AID/General Notice
DGC/ICE
August 27, 1993

SUBJECT: Ethics Rules on Seeking Employment and Post-Employment

This General Notice is pursuant to the legal responsibility of the Independent Counsel for Ethics to provide ethics counseling and advisory services to Agency employees. This is a summary of the rules and restrictions applicable to all employees who may be seeking other employment, and a summary of the rules on post-employment activities. It does not address many of the technical aspects of the criminal statutes and regulations governing these activities. THE BEST WAY TO AVOID ANY CONFLICT OF INTEREST IS TO SEEK GUIDANCE ON SPECIFIC FACTUAL SITUATIONS AS THEY ARISE.

RULES ON SEEKING OTHER EMPLOYMENT

18 U.S.C. 208 - This criminal statute prohibits you from participating in a particular matter having a direct and predictable effect on the financial interest of a person or entity with which you are negotiating or have any arrangement concerning prospective employment. The statute does not prohibit you from looking for a job. It only prohibits you from participating in official matters involving potential employers, and you must disqualify yourself from such matters.

PROCUREMENT INTEGRITY - If you are a "procurement official" you may not discuss, solicit, or accept employment or any business opportunity from any competing contractor during the course of a procurement. You are a "procurement official" if you participate personally and substantially in the scope of work, specifications, solicitation, evaluation of bids and various other activities related to the procurement. The statute permits a procurement official to request, in writing, recusal from a particular procurement in order to discuss employment with a competing contractor. The recusal must be approved by an Ethics Officer and Contracting Officer. However, recusals are not permitted if the procurement official evaluated bids, participated in the selection, or conducted negotiations on the procurement. Violations of these rules can subject you to civil and criminal penalties.

ORGANIZATIONAL CONFLICTS OF INTEREST - In rare instances a Federal employee's prospective employment with an entity who is seeking or performing a Government contract may result in an unfair competitive advantage to the contractor, or a potential bias in the manner in which the contractor would perform under the contract. This is an "organizational conflict of interest" which may arise even though the employee's prospective employment would not violate procurement integrity or other ethics laws or rules. Contracting Officers have authority to make determinations on organizational conflicts of interest.

STANDARDS OF CONDUCT RULES - The Federal Standards of Ethical Conduct, 5 C.F.R. Part 2635, prohibit you from participating in a matter affecting the financial interests of a person or entity with which you are seeking employment, even if you have not technically entered into negotiations or made an arrangement for employment as prohibited by the criminal statute 18 U.S.C. 208. The regulations are very broad and include such things as making unsolicited communications to any person regarding employment, and even sending out an unsolicited resume. An Ethics Official may grant a waiver to permit your participation in a particular matter involving a potential employer if it would not result in an impermissible appearance of a loss of impartiality.

RULES ON POST-EMPLOYMENT ACTIVITIES

In addition to the rules governing your activities while seeking employment, there are special post-employment rules imposed by the criminal statute 18 U.S.C. 207, the Office of Federal Procurement Policy Act, 41 U.S.C. 423, which also contains criminal penalties, and President Clinton's Ethics Pledge.

18 U.S.C. 207 - Restrictions Applicable to Senior Employees

Two post-employment restrictions in 18 U.S.C. 207 apply only to "Senior Employees". "Senior Employees" in A.I.D. include all officers appointed by the President, by and with the advice and consent of the Senate; and any other officer or employee paid at or above Level V of the Executive Schedule (currently $104,800), including members of the Senior Executive Service (SES employees at ES-5 and ES-6 levels) and the Senior Foreign Service (SFS employees at the FS-5 and FS-6 levels), as well as Administratively Determined Employees (AD's) or any other employee appointed, assigned or detailed to a position paid at or above Level V of the Executive Schedule. "Special Government Employees" who serve in a senior position for 60 or more days during the one year period before terminating service as a senior employee are also covered.

(1) For one year after service in a senior position terminates, no former Senior Employee of A.I.D. may knowingly make, with the intent to influence, any communication to or appearance before any officer or employee of A.I.D., if that communication or appearance is made on behalf of any other person in connection with any matter concerning official action.

(2) For one year after service in a senior position terminates, no former Senior Employee of A.I.D. may knowingly represent, aid or advise a foreign entity (i.e., government of a foreign country or a foreign political party) with the intent to influence any decision of an officer or employee of any department or agency of the United States.

18 U.S.C. 207 - Restrictions Applicable to All Employees:

In addition to the restrictions applicable only to "Senior Employees," all employees of the Agency, including Senior Employees, are subject to the following post-employment restrictions:

(1) No former employee may knowingly make, with the intent to influence, any communication to or appearance before any officer or employee of the United States, on behalf of any other person, in connection with a particular matter involving specific parties, in which the former employee participated personally and substantially in an official capacity. This is a lifetime bar.

(2) For two years after service with the Government terminates, no former employee may make, with the intent to influence, any communication to or appearance before an officer or employee of the United States, on behalf of any other person, in connection with a particular matter involving specific parties, which was pending under the former employee's official responsibilities during the last year of Government service.

(3) For one year after Government service terminates, no former employee may knowingly represent, aid, advise any other person on the basis of certain covered information concerning any ongoing trade or treaty negotiations in which the employee participated personally and substantially during the last year of Government service.

41 U.S.C. 423 - Restriction Applicable to All Employees

For two years after participating personally and substantially in a procurement matter, no employee may participate in any manner on behalf of a competing contractor in any negotiations leading to an award, modification, or extension of a contract for such procurement; or participate personally and substantially on behalf of the competing contractor in the performance of such contract.

President's Ethics Pledge - Applicable to Senior Employees

Under President Clinton's Executive Order 12834, all full-time, non-career Presidential, Vice-Presidential or agency head appointees whose basic rate of pay is not less than Level V of the Executive Schedule (except members of the Senior Foreign Service (SFS)), and who are appointed on or after January 20, 1993, are subject to the following post-employment restrictions beyond those imposed by the criminal statute 18 U.S.C. 207:

(1) For five (5) years after terminating employment as a senior appointee, you may not communicate to or appear before any employee of A.I.D. on behalf of another with the intent to influence any official action.

(2) After the termination of your employment you may never engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require you to register under the Foreign Agents Registration Act of 1938, as amended.

(3) For five years after termination of personal and substantial participation in any trade negotiation, you may not represent, aid, or advise any foreign government, foreign political party, or foreign business entity with the intent to influence an official decision of any officer or employee of the Executive branch.

Point of Contact: If you have any questions regarding these various restrictions, please do not hesitate to contact Arnold Haiman, Independent Counsel for Ethics, Room 6885 Main State, (202) 647-8556. If you are located overseas, please contact your Regional Legal Advisor for guidance.

INDEX

INDEX TO THIS HANDBOOK

This index is derived from the Master Index to the AID Handbook series issued under TM HI:4.

The underlying approach to the Master Index is one of unity, with the series of AID Handbooks considered as a single entity in which topics may appear in one, or more than one, of the component volumes.

Each entry in the Master Index that includes a reference to this Handbook is reproduced here in its entirety, thus providing both a guide to this Handbook and useful references to other Handbooks.

The formats for location citations are intended to match their appearance on the Handbook pages. Beyond the standardized Handbook number with its following colon, the citations used in the index reflect the different formats used in the individual Handbooks themselves.

UNDERSTANDING THE CITATIONS

The standard codes and messages that appear throughout the index, and their exceptions, are defined in this section. It is recommended that all users read this section before using the index.

LOCATION CITATIONS

The location citations are grouped in the following pattern:

Handbook number, colon, Chapter number, Paragraph letter, and further breakdown where needed.

The abbreviations such as App. for Appendix; Att. for Attachment; and Sup. for Supplement are also included in the citations wherever necessary.

Special cases and cross reference messages are described on the following page.

An example of the format used is as follows:

AID Financed Export Opportunities 1B:23A2a(3); 15:10C1a(1)

where the term "AID Financed Export Opportunities" is located in Handbook No. 1B, Chapter 23, Section A2a(3); and Handbook 15, Chapter 10, Section C1a(1).

SPECIAL CASES

Although the majority of the location citations follow the pattern described previously, there are these exceptions:

- In some of the Handbooks, a majority of the text is reprinted from the Foreign Affairs Manual (FAM). All FAM citations are marked by a '#' sign before the section number.

- A major portion of Handbook 14 is composed of the Federal Acquisition Regulation (FAR). All citations to this publication are cited as 14:FAR(section number).

- Three Handbook supplements that are basically separate volumes are cited as, 1B: (Procurement Policy), 3A: and 3B: (Project Managers Guidebook).

- In Handbooks which contain both Parts as well as Chapters, the Roman numeral Part number is separated from the Arabic Chapter number by a dash (-). For example: 21:I-2A8, a citation to Chapter 2 of Part I of Handbook 21.

CROSS REFERENCES

These references provide direction for selection of index terms:-

A '<u>see</u>' reference points from an unused term to the one that is used.

'x' is the reverse of <u>see</u> (do not bother to look) and provides a guide to terms that are <u>not</u> used in the index.

'<u>see also</u>' points to terms that are closely related.

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x Relative performance

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